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CRIMINAL LIABILITY FOR CAUSING DEATH OR PERSONAL INJURY FOR MEDICAL MALPRACTICE IN GREEK PENAL LAW

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Abstract: In order to be able to properly and flawlessly control the criminal liability of doctors, whose conduct caused death or bodily harm, we should first of all define the concept of negligence (external and internal). In particular, we must identify the cases in which a doctor's external negligence occurs, that is, an error in his behavior during the practice of medical duties. The enrichment of the text with cases from jurisprudence clarifies things. Subsequently, it is required for the simultaneous (convergent) act of more than one doctor to clarify who or which only of them have criminal responsibility and whether someone or some are exempted from responsibility. There are also cases in which a causal connection is established between the action or omission of a doctor and the future harmful effect on the life or health of the patient, but this is not his work and for this reason the doctor is exempted from criminal liability. And finally the question arises: Are medical specialists criminally liable?

Keywords: international, national penal law, negligence, medical malpractice, personal injury, criminal liability.

External and internal negligence

In order to establish a crime of negligence, it is required, as for any other crime (this is also accepted in Anglo-Saxon criminal law (Satlanis, 2010; Cassese, 2013; Werle, Jessberger, 2013; Σατλάνης, Παπαχαραλάμπους, 2015), the objective elements (*actus reus:* objective nature of the crime) and the subjective element (*mens rea: s*ubjective nature of the crime), i.e. a certain form of culpability. The objective status in the crime of negligence is fulfilled by the so-called external negligence, while the subjective status by the assistance of internal negligence, which is distinguished into conscious and unconscious negligence. While these types of negligence may be implicit in other legal systems, they are explicitly mentioned and analyzed in German, Swiss and Greek criminal law, among others. Thus, the crime of negligence cannot be established only with the assistance of a form of culpability (internal negligence), as is generally accepted in the Jurisprudence of the Greek Supreme Court, but an external behavior is also primarily required (external negligence) (Ανδρουλάκης, 2000; Βαθιώτης, 2007; Μυλωνόπουλος, 2007; Krey, Esser, 2012; Μαργαρίτης, 2012; Κοτσαλής, 2013; Καϊάφα-Γκμπάντι, 2013;

Χαραλαμπάκης, 2016; Wessels, Beulke, Satzger, 2016; Σατλάνης, 2019)[1].

It should be pointed out that in Anglo-Saxon law there is beyond fraud and negligence and among them a third form of culpability, which is called Recklessness. Recklessness (anticipation of the harmful result for the legal good with modern recklessness or indifference) in Anglo-Saxon law means both *dolus eventualis* (potential fraud) and conscious negligence, i.e. the *bewusste Fahrlässigkeit* of German criminal law means the conscious negligence (Werle, 2014)[2].

1Because the crime of negligence is composed of external (Verletzung der objektiven Sorgfaltspflicht or objektive Fahrlässigkeit) and internal negligence (subjective Fahrlässigkeit). External negligence is now recognized and mentioned explicitly, although rarely, also by the Supreme Court (AP): see indicatively AP 268/2010, AP 296/2010, AP 1106/2010. Furthermore, the Supreme Court expressly recognized external negligence in cases of work accidents: see indicatively AP 615/2011, AP 676/2011, AP 296/2010, AP 1106/2010, AP 1372/2010. According to Margaritis: "The jurisprudence of our supreme annulment court basically remains attached to the "classical" concept, which perceives negligence exclusively as a form of culpability (...) The prevailing theory, however, accepts that negligence has two aspects: the objective, which is included in the area of the wrongdoer (external negligence) and the subjective, which is included in the area of guilt (internal negligence). In the context of the last approach, the objective nature of the crime of negligence is not carried out by any but only by a wrong behavior-an unskilled, faulty conduct of an undertaking. It is clarified, however, that explicit reference to the concept of external negligence is sometimes made in the jurisprudence of the Supreme Court and more often in the jurisprudence of the courts of substance". Indeed, the courts of substance, much earlier than the Supreme Court, dealt more correctly with external negligence. From the field of medical negligence, the decrees that are worth talking about are those of the Council of Misdemeanors of Ioannina 181/2004 (Criminal Procedure 2004, 1245), Council of Misdemeanors of Athens 2273/2004 and Council of Misdemeanors of Thessaloniki 400/2007 (Criminal Code 2007, 687), in which external negligence is examined as an element of the objective nature of the crime.

2According to Werle: "(…) common standards are recklessness and d*olus eventualis*. A person acts with *dolus eventualis* (…) if he is aware that a material element included in the definition of a crime (such as the death of a person) may result from his conduct and "reconciles himself" or "makes peace" with this fact.

A crime of negligence therefore exists when the perpetrator manifests an externally flawed and wrong behavior (action or omission), which constitutes a breach of a duty of care and produces a risk to a legal good (external negligence, related to the objective nature of the crime of negligence: e.g. A is driving and does not have his attention constantly strained, since he is arguing with someone on the mobile phone, or is driving at a speed of 90 km per hour in a residential area), but if the perpetrator is also guilty of internal negligence which constitutes a form of culpability (mental attitude) and fulfills the subjective nature of the crime of negligence. The latter is established, when the perpetrator either diagnosed that his behavior is externally wrongful and produces a risk for a legal good and therefore predicted the result as possible and contingent but believed for some reason that it would not occur (conscious negligence or negligence with conscience) or did not foresee the criminal result but based on his personal qualities, abilities, knowledge, circumstances and experiences from his profession, life or service in the particular case and under the particular circumstances in which he found himself, he could foresee as

Recklessness, particular to the common law tradition, is also located somewhere between (direct) intention and negligence. Under this concept, an offender is held liable for consciously creating a risk that is realized through the commission of the crime. Some authors and courts place recklessness and *dolus eventualis* on a comparable level of culpability (…) others locate recklessness closer to an aggravated modality of negligence common to civil law systems ("bewusste Fahrlässigkeit") (…)".

possible the fulfillment of the objective nature of the crime by negligence (in particular to diagnose that his behavior is externally flawed and creates a risk for a legal good) and to foresee as possible and contingent the future result, taking actions to prevent it (unconscious or unconscionable negligence). According to all, without exception, the university professors in Greece, the provision of art. 28 of the Greek Penal Code does not give a clear and complete definition of the meaning and content of negligence:

"Whoever acts negligently due to a lack of care that he owed under the circumstances and could pay, either did not foresee the punishable result caused by his act, or predicted it as possible, but believed that it would not occur (...)"

It is obvious that the element of external negligence is missing from the above definition.

External negligence

The rules of care, which are intended to prevent endangerment or damage to legal goods, may be prescribed by law (e.g. provisions of the labor law for the safety of workers) or by a contract or imposed by unwritten rules and in particular from the specific circumstances (e.g. it is not allowed to build new floors in a building, when a basement for car parking has already been opened on its foundations in excess of the structural design).

When the human behavior remains within the framework of permissible dangerous action (e.g. driving a car in compliance

with the rules of the Road Traffic Code or operating a plant with dangerous machinery in compliance with the safety rules for workers or performing medical surgery in compliance with the recognized rules of medical science), then there is no external negligence.

External negligence may govern the conduct of an undertaking but may also consist of undertaking the conduct of an undertaking ("undertaker's negligence") without having the required conditions and special knowledge or the appropriate machinery (e.g. undertaking an operation by a novice, newly minted and inexperienced medical doctor without the presence and assistance of an experienced surgeon). In the case where the external negligence consists of an omission, it is required according to art. 15 of the Greek Penal Code that the perpetrator has a special legal obligation to prevent the result from occurring. This obligation may derive from the law (e.g. the parents' obligation to diligence, care and protect the child: See articles 1510, 1518 of the Greek Civil Code for parental responsibility and care as a duty and right of parents), from a contract (e.g. the obligation of a hotel lifeguard to save clients from drowning), from a previous unilateral action of the obligee, by which he voluntarily accepted the prevention of future risks to the legal goods of third parties, or more generally from previous dangerous behavior of the perpetrator (e.g. whoever

digs and opens a pit must fence it off or adequately mark the danger (Σατλάνης, 2005; Χαραλαμπάκης, 2020)[3]).

The Supreme Court of Greece (The Areios Pagos-AP more usually), does not explicitly use the concept of external negligence (as the prosecutors of the lower courts have mainly done since the 1990s in the prosecutorial proposals to the judicial councils) but nevertheless looks every time for the external negligence behavior of the alleged perpetrator (e.g. driving without the driver having constant attention, not braking in time or not taking a successful evasive maneuver, although the danger became visible from a sufficient distance and such a possibility existed, violation of priority, failure to fence with a fence of an excavated plot by the contractor, not installing stable scaffolding during the construction of a building for the safety of the workers, assigning dangerous work to a minor or an unskilled worker, leaving a medical tool inside the body of the operated patient, using an anesthetic containing alcohol during tonsillectomy without prior checking of its composition, etc (Satlanis, 1994).

3AP 1030/2016: "In particular, their negligence consists in the fact that they, although they had a special legal obligation from their superior capacity to receive the provisions of the law (art. 438 PC and 108 par. 3 Legislative Decree 3030/ 1954) and required in the specific case preventive safety measures to avoid accidents, left the well in question, which was located at a close distance from the road and in a place where people obviously passed, either on foot or in their vehicles, after it was proven at a distance of about 300 meters from this point there was a settlement, uninhabited, unfenced, but also unguarded (...)". See AP 35/2009, Ποινική Δικαιοσύνη 2010, σελ. 156, AP 556/2011, Ποινική Δικαιοσύνη 2012, σελ. 12.

External negligence is investigated as a primary element, so that, if it is not established, the objective nature of the crime of negligence, which is part of the criminal or special or legal nature or form of the crime, is not met, even if the perpetrator causally caused the result, and then all further research ceases. A crime then by negligence was not committed. (Σατλάνης, 1999; Ανδρουλάκης, 2000; Σατλάνης, 2005; Βαθιώτης, 2007; Χαραλαμπάκης, 2010; Χαραλαμπάκης, 2020)[4]. Penal liability will therefore not exist, when the doctor, in the exercise of his duties, acted in accordance with the commonly recognized rules of medical science and art (*lege artis*) and after previously, if possible, enlightening the patient and giving consent, precisely because external negligence will not be established on his person, even if his relevant diagnostic action or medical surgery causally caused the death of the patient (Χαραλαμπάκης, 2016).

Examples of negligence: 1) B is a director of technical personnel in an industry and assigns the minor E (who has just turned sixteen years of age) to operate a dangerous machine, after only three days of training. Placing the minor to work in front of this dangerous machine resulted in the amputation of the minor's

4For negligence and its types, i.e. external as a form of externally flawed and incorrect behavior and internal as a form of culpability and mental attitude, see the prosecution proposals Chr. Satlani in the resolution n.12/1994 Council of Misdemeanors of Cos in: Ποινικά Χρονικά 1994, σελ. 680 επ., 685 επ., and in resolution n. 19/2001 of the Council of Misdemeanors of Samos in: Ποινική Δικαιοσύνη 2001, σελ. 1114 επ., 1317 επ., each time with references to jurisprudence and legal theory.

right leg. External negligence exists. In addition, B did not foresee the harmful result but could, based on the experiences and knowledge he had from the profession, diagnose the future risk, predict the result and avoid it. Therefore, there is unconscious negligence in his person (bodily harm due to negligence: article 314 par. 1 sub. a) of Greek Penal Code). 2) C has a dog trained for guarding the house and takes it with him on walks, without a muzzle and chain, as required by the relevant custody rule. At the sight of a small child, the dog rushes in and bites him in the face, causing him severe disfigurement. C, although he had a special legal obligation from prior dangerous behavior (owning a dangerous dog), failed to muzzle and chain him (this constitutes external negligence) and thus did not prevent the harmful effect. He did not foresee this but he could with the experience he had from life foresee it and avoid it. Therefore, there is unconscious negligence on the part of the perpetrator here as well (bodily harm due to negligence: article 314 par. 1 sub. a) of Greek Penal Code). 3) A owns a very old car with brakes and tires in very poor condition. He keeps putting off getting it repaired because he hopes to buy a new car. But he knows very well that this is a very dangerous vehicle, which can also cause death. Nevertheless, he decides to go with it to a wedding, taking two villagers with him, after convincing himself that he should drive at a very low speed and with great

care. On the road, a donkey is suddenly thrown onto the pavement and in order to avoid it, he is forced to brake sharply and turn the steering wheel slightly to the left, as a result of which the car skids due to the worn brakes and tires as well as the slipperiness of the pavement due to light rain, entering the opposite traffic flow and collide head-on with an oncoming vehicle. His two fellow villagers are killed in the collision. Here the possibility of deceit as to death should be ruled out. He foresaw the fatal outcome as a possibility but did not accept it, given that he also boarded the very dangerous vehicle, thus knowingly and willfully putting himself at risk. He certainly did not accept his own death either. He believed that he would avoid the possibility of an outcome occurring if he drove very slowly and very carefully. Therefore, there is conscious negligence in his person, but from a more correct point of view, it is not just manslaughter by negligence (art. 302 of the Greek Penal Code) but fatal disruption of traffic safety (art. 290A par. 1b dd) of the Greek Penal Code).

Two more examples, in which the crime of negligence does not occur, because the offender is unaware of the dangerousness of his conduct and at the same time could not have diagnosed its dangerous character and thus foreseen the harmful result for the legal good in order to avoid it, are the following: It is about the farmer who sprinkles his trees that are located next to foreign

fields with a harmful drug, but ignoring the dangerous nature of his action, because he is convinced by the instructions for the use of the drug (which has received a marketing license from the competent authority), which confirm the harmlessness for humans, animals or crop;

and also for the contractor who undertakes to carry out works of the Electricity Company and installs as a foreman in dangerous works due to frequent contact with the electric current someone, who showed him a fake licence or a genuine electrician's degree that had been obtained through a bribe and without the assistance of the necessary electrical knowledge. In these cases, if there is damage to animals or crops or human death, external negligence can be established but there will be no internal negligence (neither conscious nor unconscious). Neither the farmer nor the contractor could have foreseen the criminal outcome because they were unaware of the existing risk.

External and internal negligence in the practice of medical duties. External negligence

Especially in the area of medical negligence (during the exercise of the medical profession-operation) external negligence can appear in the following forms (Σατλάνης, 1999): a) either as a wrong diagnosis or non-diagnosis of a disease due to non-compliance with the commonly recognized rules of medicine

science and has as a consequence the non-perception and non-disclosure of the risk that threatens the legal good of life or physical integrity and health[5] (in most cases, the correct diagnosis presupposes taking the patient's history, but the patient must be honest and do not hide details of his history, otherwise

5AP 472/2014: "From the pre-proven real facts, in combination with the commonly recognized rules of medical science, which will be mentioned below, it is judged that, for the death of M. M. on 7.7.2008, (...) responsible is the defendant G. M., who from 2.1.2005, when he took over her medical care, until 8.11.2006, when the lump appeared in her abdomen, but also during a subsequent period, during which she was in (…) and her state of health worsened day by day, he did not act *lege artis* in the sense set out in the major opinion and in particular he did not perform the required medical operations or provide his patient with the appropriate advice and recommendations in order to determine the cause of her death, which, as fully proved, was the sarcoma of the endometrial layer (…). And this is because M.M. requested the defendant's medical care-and he undertook it-in order to diagnose the cause of her heavy menstrual bleeding, which (bleeding) lasted for more days than usual, she expected not to engage in that behavior on the part of the defendant, which, in particular, according to Law 3418/2005 (Code of Medical Ethics), had to be observed in her case in order to foresee, as long as it was scientifically possible, any cause that posed risks for her health and related to the disputed area of her body (internal genital system), so as to exclude or minimize the unpleasant consequences from this cause. Relatedly, the following are defined in Law 3418/2005: Article 2: The practice of medicine is a function that aims to maintain, improve and restore the physical, spiritual and mental health of man, as well as to relieve him of pain (par. 1). The medical function is performed in accordance with the generally accepted and applicable rules of medical science (...) (par. 3). Article 9: The doctor gives priority to the protection of the patient's health (par. 1). The doctor cannot refuse the offer of his services for reasons unrelated to his scientific competence, unless there is a special reason, which makes the offer of his services objectively impossible (par. 2). Article 11: The doctor has a duty of truth to the patient. It must fully and comprehensibly inform the patient about the actual state of his health, the content and results of the proposed medical procedure, the consequences and possible risks or complications from its execution, the alternative proposals, as well as about the possible recovery time, so that the patient can form a complete picture of the medical, social and economic factors and consequences of his condition and proceed, accordingly, in making decisions (par.1). (…) The defendant, a doctor-gynaecologist, did not fulfill the above obligations to a large extent, with the result that, despite his long-term monitoring of M.M.'s state of health, the appearance of leiomyosarcoma in the uterus (sarcoma of the uterus) was not diagnosed in time of the endometrium), which was the sole cause of her death, as mentioned above. In particular, throughout the monitoring of her health in terms of her internal genitalia, she never recommended that M.M.

any diagnostic error will not be borne by the doctor (Καραγεώργος, 1976; Σατλάνης, 1999; Χαραλαμπάκης, 2016)[6], clinical examination of the patient, laboratory tests, x-rays and advice of other doctors) (Φαρσεδάκης, Σατλάνης, 2013;

undergo an MRI scan, the images of which, according to general scientific acceptance, have excellent clarity and allow to the specialized Medical Radiologists to accurately diagnose the possible existence of any damage to the examined organs of the human body, so that the appropriate treatment can be administered or the patient can undergo the necessary surgery. It should be noted that this procedure (MRI) is painless for the patient and not harmful to his health, and it only takes a few minutes of the hour, nor is it expensive, although in this particular case the cost of M. M.'s treatment, as it turned out, did not concern either her or her parents at all. In such an examination, the defendant did not consider that M.M. should undergo it, but neither did he recommend a CT scan, obviously because he limited himself only to the existence of the fibroid he diagnosed and its removal, which, however, according to the above-mentioned proven evidence, was not linked to the cause of her death. However, according to the judgment of the Court, the existence of leiomyosarcoma in the internal genitalia of his patient could be established with the above diagnostic (imaging) methods, i.e. CT and MRI. (...) Thus, the medical examination, carried out by the defendant exclusively with an ultrasound, was not sufficient to diagnose M.M.'s general state of health in the area of her genital system, as it was limited (the examination with ultrasound) in specific structures of the vagina and uterus and did not extend to other parts of her body (see testimony of witness X. K.). The result of the above omissions of the defendant was that the cause of M.M.'s death was not diagnosed in time, which (cause) was established by the aforementioned upper-lower abdominal magnetic resonance imaging (Radiologist G.M.), to which she underwent at EUROMEDICA facilities on 30.1.2007, but it was too late then for effective treatment. (…) Consequently, the death of M.M., which according to the above was caused by metastases of the sarcoma of the endometrial layer, is due to the (unconscious) negligence of (...) the defendant doctor G.M., who for lack of the attention which he owed, as a medical scientist, and could afford, did not diagnose in time (…) with the result, which he did not foresee, that much time passed unexploited, during which it was possible to effectively treat the cancer by total hysterectomy after the appendages of the uterus before it spreads to the tissues and other vital organs of her body or, at least, to reduce its consequences in terms of the time of her death". With what it accepted, the Court of the substance, in its contested decision, provided the specific and detailed reasoning required by the above provisions of the Constitution and the Code of Criminal Procedure (…)".

6A special case of lack of negligence exists in the case of justified or gratuitous or excusable medical error in diagnosis, which may be due to factors such as the absence of symptoms of the disease and mainly the identity of the symptoms of two diseases

Χαραλαμπάκης, 2016)[7]; b) either as incorrect- malpractice treatment (pharmaceutical, dietary, surgical, post-surgical, etc.), i.e. a procedure that aims to cure the patient in a manner contrary to the commonly recognized rules of medical science (e.g. uncontrolled blood transfusion the compatibility of blood groups, leaving tools or other objects in the patient's body after

and at the same time the absence of symptoms that are exclusively characteristic of the existing disease or the concealment from the patient of an important element of the history (e.g. concealment to a medical pathologist in Preveza in 1997 on behalf of a young woman in Athens who had just undergone an artificial termination of pregnancy, as a result of which the fever and vomiting she presented were not considered suspicious-they were assessed as a simple cold-and she died of rapid septic shock due to the scraping residues left by the gynecologist in her vagina). Koukoutsis prosecution proposal which was accepted in resolution 51/1995 Council of Misdemeanors of Kozanis in: Υπεράσπιση 1996, 863επ., with observations by Apostolidou. Here is a case from the jurisprudence, where the deceased was drunk due to excessive consumption of alcohol without being able to inform the doctor, had fallen from a height of three meters, had no fractures or other signs that would testify to a fall to the ground, had normal pulses that they would not be able to show signs of internal bleeding, had a normal clinical picture and suffered a detachment of the kidney pedicle which is a rare occurrence and especially for young people, such as the deceased. Surprisingly, the Supreme Court annulled the first conviction of the Dodecanese Court of Appeal against the junior doctor (AP 1648/2007) but then, after the referral of the case for a retrial, accepted and validated the second conviction (AP 1484/2008).

7A special case also of lack of negligence exists in the case of justified or gratuitous or forgivable diagnostic error by a doctor, which is due to a lack of the required special knowledge or a lack of appropriate diagnostic equipment (advanced logistical infrastructure) at a time when the doctor is forced and pressured by the circumstances to make a diagnosis (e.g. junior doctor of a small provincial hospital). If the doctor, under conditions of pressure, did not make a correct diagnosis or even perform a life-saving medical surgery due to a lack of the required special knowledge or due to a lack of advanced logistical infrastructure, he will not be liable according to the axiom “no one is obliged to do the impossible” (see AP 1384/2001, ΠοινΧρον ΝΒ/2002, 600, Court of Appeal of Athens 4549/2000, ΠοινΔικ 2002, 130, Misdemeanor Court of Serres, ΠοινΧρον ΜΓ, 1185, with observations of Λίβου. On the contrary, as one will understand later, there will be external negligence, if the doctor undertook without being pressured by the circumstances and attempted a diagnostic or medical-surgical operation despite the lack of the required special knowledge or advanced logistical infrastructure (“negligence of the undertaker”).

surgery, delay and untimely diagnosis and operation[8] or administration of an overdose of medicine:

"(…) c) either as not referring the patient to a specialist doctor and voluntarily (not forced by the circumstances as in the case of an emergency) undertaking the carrying out of a diagnostic or therapeutic project ("undertaken negligence"), without having the necessary special knowledge and skills or the appropriate diagnostic-therapeutic means and machines)

8AP 880/2013: "However, the result of the death of the parturient A.M., which the defendant did not foresee, is due, based on what has been extrapolated, to his (unconscious) negligence since a) he did not pay the required attention and care (...), b) based on his personal circumstances and abilities (as a result of his profession) he should and could have foreseen and avoided the punishable result he brought about without having foreseen it and c) his negligent behavior consists of omissions that are objectively and causally connected to the final result of the death of the parturient. In particular, while he knew that the latter had developed varicose veins from the seventh month of pregnancy, which during the ninth month had developed into large ones occupying the area of the genital organs... and furthermore that a) the area of the genital organs during the process of natural childbirth receives high pressures during the contractions, which carries risks since it can also lead to the rupture of the cervical and sinus varices (see relevant excerpt of the defendant's plea "(…) Spontaneous rupture of cervical varices can occur and of the sinus from the increase in pressure…").b) the pressures in the above area become more dangerous when oxytocin is used to induce the natural birth process and c) the varicose veins of the vulva are in most cases associated with the presence of varicose veins in the internal genitals as well (see relative truncation of his apology "(...) When there are varicose veins externally we suspect that they are also inside the uterus (...)"), due to a lack of the required attention and care, which he had to pay due to his capacity as an obstetrician-gynecologist predicted that the choice of the natural childbirth process and indeed with the induction of labor was dangerous due to the serious and heavy form of the varicose veins that existed in all the genitals (see relevant reference in the 2-25-2005 forensic report of P.K.), and due to his medical specialty and his many years of experience, he should have evaluated better and chosen the procedure of masculine incision, which was also the most appropriate, since it does not affect varicose veins in the genital area due to the non-exertion of pressure in this area contributed to the absence of uterine contractions and vaginal expansion (see relevant report of the examined witness K.M. "(...) In normal childbirth, the vagina is under pressure and the risk of the varicose veins breaking increases (...)"). If he had chosen this procedure from the beginning, and in fact at the beginning of the ninth month of pregnancy, the rupture of the vaginal and cervical varices would not have occurred, the bleeding of which brought about the fatal result. Any bleeding during caesarean section, since there was the possibility of surgical control, would obviously be treatable (…). It should be noted that I.M., Assistant Professor of Obstetrics and Gynecology at the Obstetrics and Gynecology Clinic of PAGNI, as well as A.A., Professor of Obstetrics-Gynecology at the University of Athens, in the medical expert

(Βαθιώτης, 2012; Χαραλαμπάκης, 2016)[9]; d) or more generally as non-fulfillment of the duty of medical care and diligence (refusal to provide medical services, absence of a doctor from the hospital during on-call hours, failure of a doctor to follow up the patient's health after surgery, etc.) (Σακελλαρὸπουλος, 2007; Τοπάλης, Χοβαρδάς, 2010; Τρανταλίδης, 2012; Χαραλαμπάκης, 2016)[10] .

Internal negligence

reports read, they characterize as medically correct the choice of natural childbirth only if there were no health problems mentioned in her history during the pregnancy, while they characterize caesarean section as appropriate given the existence of varicose veins of the vagina and the posterior position of the fetal head". (…) On the basis of what was accepted by the Three-member Court of Appeal of Crete, in its contested decision n. 1377/2012, it provided the special and detailed reasoning required by the above provisions of the Constitution and the Code of Criminal Procedure (…)".

9ΑΡ 1446/2008 Ποινικός Λόγος 2008, 903.

10See also, prosecution proposal Chr. Satlani which was admitted to the will under n. 19/2001 Council of Misdemeanors of Samos in, Ποινική Δικαιοσύνη 2001, σελ. 1114 επ., 1317 επ.. Typical cases of externally negligent medical acts of an obstetrician-gynecologist that manifested themselves in the form of action were: 1) the wrong choice of operation-delivery method and in particular the performance of normal delivery instead of caesarean section (ΣυμβΑΠ 34/1981, Ποιν Χρον 1981, 433, ΣυμβΠλημΚω 54/1988 ΕλλΔνη, 1990, 451, ΣυμβΠλημΡοδ 132/2007, ΤΝΠ ΝΟΜΟΣ, ΤρΕφΑιγ 72/2008, Αρμ 2010, 249), 2) the choice of laparoscopy instead of open surgery (ΑΡ 956/2010, ΤΝΠ ΝΟΜΟΣ), 3) incorrect handling during surgery (ΑΡ 1266/2004, Ποινικός Λόγος 2004, 1565, ΑΡ 449/2009 ΤΝΠ ΝΟΜΟΣ, ΤρΠλημΑθ 21422/2010 ΠοινΔικ 2010, 1270) 4) the incorrect administration of medication (inappropriate medication or overdose of medication) and in particular prolonged administration of oxytocin (ΑΡ 97/2007 ΤΝΠ ΝΟΜΟΣ, ΑΡ 1211/2007, ΠΛογ 2007, 857), 5) the processing of medical act in a private practice without infrastructure (ΜΟΔΚαβ 15/2002, ΠοινΔικ 2003, 1298), 6) the assignment error (ΑΡ 1589/2007, ΤΝΠ ΝΟΜΟΣ, ΑΡ 1609/2009 ΠΧρ 2010, 555, ΑΡ 1431/2010 ΠΧρ 2011, 513). There were more cases in which the defendant obstetrician-gynecologist omitted. The most common externally negligent omissions were: 1) non-diagnosis or misdiagnosis leading to incorrect treatment (ΑΡ 76/2004 ΠοινΔικ 2004, 790, ΣυμβΠλημΡοδ 51/2005 ΤΝΠ ΝΟΜΟΣ, ΣυμβΠλημΚερκ 125/2005, ΠοινΔικ 2006, 32, ΑΡ 97/2007 ΤΝΠ ΝΟΜΟΣ, ΑΡ 1211/2007, ΠΛογ 2007, 857, ΑΡ 1812/2008 ΤΝΠ ΝΟΜΟΣ, ΑΡ 2119/2008 ΤΝΠ ΔΣΑ Ισοκράτης, ΑΡ 2474/2008 ΤΝΠ ΝΟΜΟΣ, ΑΡ 1609/2009 ΠΧρ 2010, 555, ΑΡ 335/2010 ΠοινΔικ 2010, 1217, ΑΡ 1431/2010 ΠΧρ 2011, 513), 2) untimely transfer to the hospital from the private practice or private clinic (ΜΟΔΚαβ 15/2002, ΠοινΔικ 2003, 1298, ΑΡ 76/2004, ΠοινΔικ 2004, 790, ΑΡ 264/2006, ΠΛογ 2006, 189), 3) recommendation to return home while the delivery was to take place (ΑΡ 2474/2008 ΤΝΠ ΝΟΜΟΣ), 4) failure to perform (or not performing in time) laboratory (e.g. hematological) or imaging (e.g. x-ray, ultrasound) tests (ΑΡ 76/2004,

Such negligence exists when the doctor predicted the harmful result for the legal good (life or physical integrity and health) but believed that it would not occur (conscious negligence) or when he did not foresee it but could foresee it and take measures to prevent it based on his knowledge, professional experience and skills.

The combination of external and internal negligence is clearly found in AP 1220/2008 decision:

"in view of these, there is penal liability of the doctor for manslaughter in those cases, in which this result is due to a violation by the doctor of the commonly recognized rules of science (Σακελλαροπούλου, Λάλα, Σακελλαροπούλου, 2013; Χαραλαμπάκης, 2016) for which no doubt can arise and his action was not in accordance with the objectively imposed duty of diligence. Omission, as a concept, is inherent in every type of negligence, since one limb of liability consists in the failure to exercise due care, i.e. an omission (…)".

However, when the negligence does not consist of a certain omission, but constitutes a set of conduct that preceded the result, then, in order to establish the manslaughter by negligence, as a crime committed by omission, the assistance of the terms of art. 15 of Greek Penal Code is also required, in which it is stated that, where the law for the existence of a penal action requires a certain result to have occurred, the failure to prevent it is punishable the same as causing it by action, if the

ΠοινΔικ 2004, 790, ΑΡ 1266/2004, ΣυμβΠλημΡοδ 132/2007, ΤΝΠ ΝΟΜΟΣ, ΑΡ 1812/2008), 5) omission of admission (or untimely admission) to the operating room (ΑΡ 264/2006, ΠΛογ 2006, 189, ΑΡ 97/2007, ΤΝΠ ΝΟΜΟΣ), 6) inadequate monitoring either during surgery or diagnostic testing (ΑΡ 1337/2005, ΠΛογ 2005, ΠοινΔικ 2006, 135, ΑΡ 97/2007, ΤΝΠ ΝΟΜΟΣ, ΣυμβΠλημΡοδ 132/2007, ΤΝΠ ΝΟΜΟΣ) or postoperatively (ΑΡ 335/2010, ΠοινΔικ 2010, 1217, ΑΡ 956/2010, ΤΝΠ ΝΟΜΟΣ) etc.

person responsible for the omission had a special legal obligation to prevent the occurrence of the result.

From this last provision, it follows that a necessary condition for its application is the existence of a particular (i.e. special and not general) legal obligation of the guilty party to prevent the criminal outcome. This obligation may arise mainly from: a) an express provision of the law; b) a set of legal duties, linked to a certain legal position of the obligee; c) a special relationship established, either as a result of a contract, or simply from a previous action, from which the person responsible for the omission voluntarily accepted to prevent risks in the future; d) from a previous act of the person responsible (action or omission), as a result of which the risk of the criminal outcome was created.

Furthermore, according to the provisions of art. 28 of Greek Penal Code, negligence is distinguished into non-conscious, in which the perpetrator, due to a lack of due care, did not foresee the punishable result caused by his act, and into conscious, according to which he foresaw, that this result might occur from his behavior, but he believed that he would avoid it. In view of this distinction, the court of substance, when it pronounces a conviction for a crime of negligence, must state clearly in its judgment which of the two types of such negligence occurred in the particular case, because, if it does not state this clearly, or

accepts both types, an ambiguity and contradiction is created, which renders impossible the appellate review for the correct or non-application of the relevant substantive penal provision and a ground for appeal is established there for lack of legal basis according to art. 510 par. 1, lett. E', Greek Code of Criminal Procedure:

"(...) In this case, the Three-Member Court of Appeal (...) accepted that (...) the following facts were proven: "(...) the Y, in the morning hours of 22.12.2001 and while he was inside the tavern he kept in (...) Thessaloniki with the name (...), felt unwell and (...) presented "numbness of limbs, pallor and pain in the chest" as noted in his relevant document, after being informed by him and his employees in question"".

At approximately 12.40, the above patient is transferred to the outpatient clinics of the on-call "ACHEPA" Hospital, in which, on that date, the head, as on-call physician of the Special Infections Unit, of the 1st Pathology Clinic of the A.U.Th. with the specialty of the specialist infectious disease pathologist the accused. The patient is taken to the outpatient clinic, with a special wheelchair, which is present in it, accompanied by the above-mentioned nephew and, after informing the accused by the witness (EKAV employee), he remains in his corridor, in order to be examined by the accused after previously giving his companion the number 64 as a priority number. The above condition of the patient was deteriorating and his companion, seeing that his sick uncle was not being examined by the accused, was forced to disturb him (accused) and inform him of his uncle's condition, which was constantly deteriorating but the

accused, walking out of his office and satisfied with the distant physiognomic survey of the aforementioned patient, he ruled that he is “fine, he has color too”, entered it (his office) again and left him waiting. But the patient, after waiting, around 25-30 minutes, completely helpless, in the corridor of the hospital, collapsed and thus his death occurred, at the age of 59, from a myocardial infarction at around 13.55, after previous efforts of the doctors, after he fell on the ground, to revive him, were fruitless. Thus, the defendant demonstrated negligence, which is causally related to the final result.

His negligence consists in the fact that, although he was informed that the patient was presenting with numbness of limbs, pallor, stomach ache, chest pain and his condition was constantly worsening, he did not proceed to examine him immediately to diagnose that it was a heart attack in progress, and to immediately refer him to the intensive care unit of the cardiology department of the Hospital, nevertheless, he left him completely helpless, for about 25-30 minutes, which were very critical and thus the patient died of a myocardial infarction. The defendant claims, of course, that he was not informed of the above symptoms of the patient, except that he has a history of gastric bleeding. His claim does not correspond to the truth. But even if he wanted it to be considered that this was indeed communicated to him, he himself had to, since it was proved

that he was disturbed by the aforementioned companion of the patient, about the worsening of the latter's condition, to immediately examine the patient and establish, with his medical knowledge the seriousness of this, since even an average person, who has not studied medical science, when he hears that someone presents symptoms similar to those of the patient in question, immediately associates them with a possible heart problem, much more so he (accused), who has the status of a doctor. His further claim, that he examined the patient and determined that it is not an “extremely urgent case”, as confirmed in a relevant document from the hospital, must also be rejected, as essentially unfounded, given that no examination of him was carried out, except for the above-mentioned “from a far” view of the patient, which only has the concept of examination. After all, it is not logical for the patient to be examined by the accused, as the latter claims, to have normal pulses, a good appearance and as soon as the doctor turns to enter the office, the patient “collapses” on the ground. Of course, the defendant, in a related question from the court, spoke about the phenomenon of “collapse”, as it is called in medical science. However, in this particular case, he cannot claim such a phenomenon, since it emerged that we have a heart attack at least from 11.30 to 13.10 approximately, when the patient collapsed. Therefore, since it has been proven that the defendant

did not pay the attention imposed by an objective judgment, which every:

"(...) prudent and conscientious doctor in this particular case would or should have shown, while he had the opportunity, with a direct relevant examination and due to his medical knowledge, to foresee and avoid, at least at that moment, the punishable result, which he did not foresee as possible and, as a consequence of his said omission, created the causal condition for the production of the result, namely death, due to a heart attack of the patient's myocardium (…) and for that he must be declared guilty (…).(…) With the above admissions, the Three-Member Court of Appeal made the required special and detailed reasoning in its challenged decision (…)" (Μαργαρίτης, 2012; Φαρσεδάκης, Σατλάνης, 2012)[11].

11When is there a causal connection between the perpetrator's behavior and the resulting outcome? When, in other words, did the perpetrator alone or in addition to others cause the actual result? Such a causal connection exists according to the theory of the equivalent of conditions (*conditio sine qua non*) held in science and jurisprudence in the same crimes of action, when the action is a condition of the result in the sense that this would not have occurred without the action of the perpetrator, in crimes of omission, when, as long as the omitted act is considered to have been performed, the result would have been prevented with certainty or a probability that reaches the limits of certainty. Causal connection therefore does not exist, when it is proven with certainty or a probability that reaches the limits of certainty, that the result would have occurred even if the perpetrator had not omitted the imposed action, as is the case e.g. of the absentee being at the obstetrician's hospital on duty, when the pregnant woman entered it with the unborn already dead for some time or when the necrosis occurred within ten minutes of the hour after entering it, whenever he was present the obstetrician could not successfully deal with the case and prevent the harm. (…) Doubts about the existence of a causal connection between the behavior of the perpetrator and the resulting outcome are in favor of the perpetrator according to the maxim "in doubt in favor of the accused" (*in dubio pro reo*)". According to Margaritis: "(…) in order to fulfill the objective condition of the essential crime of negligent bodily harm, it is necessary to establish the existence of an objective causal link between the error of conduct (and not between the perpetrator's entire conduct) and the bodily harm. At the level of jurisprudence, the causal link is established or not, based on the theory of the equivalent of terms (*conditio sine qua non*) (...) A causal link is also required in crimes of omission, where, according to jurisprudence, the theory of the equivalent of terms is formulated according to its content as follows: the omission is linked to the punishable result, when we can imagine that, if the imposed action was done, which was not done, then with a probability that reaches the limits of certainty, the specific criminal result would not occur. Thus, in crimes committed by omission, there is a causal link between the omission and a future criminal result when, with high probability (and not certainty as in other crimes), the particular criminal result would have been prevented if the perpetrator had performed the omitted action. It is clear that the doubt as to the existence of a causal connection

Here is a case of referral of doctors to the audience of the competent court for involuntary manslaughter:

"(...) When someone ignorantly administers or gives the order to administer a tenfold dose of medicine, he cannot foresee in any case, no matter how enlightened, competent, expert and experienced doctor he may be, that his behavior can lead to death, precisely because he does not know the danger of his action. The extrinsic negligence of the two doctors is that they failed to look with particular care, diligence, conscientiousness and devotion at the PARVOLEX ampoule label or directions for use and to diligently deduce the contents of each ampoule to 2,000 mg, thereby making an incorrect calculation and consider ten times the amount of antidote to be administered. They saw the label completely fleetingly and casually, but failed, although they had a special legal obligation, to lean over it and observe closely what was written on it or in the instructions for use, trying to understand their meaning with certainty. Thus, they did not predict the outcome of death as possible and contingent, but they could now, based on the knowledge and experience they had from their profession, predict that from this cursory consideration of the ampoule label and from their omission to proceed with diligent, careful and conscientious observation of the label or instructions for use could cause a mistake, decide to administer an overdose of antidote and thus death (…)".

For all these reasons I suggest: 1) Refer before the Samos Lower Criminal Court the B.K. (Deputy Director of the Department of Pediatrics of the General Hospital of Samos, born in 1954) and E.P. (junior doctor at the Pathology Clinic of the General Hospital of Samos, born in 1971) to be judged as culpable that on 12.9.2000 and around 23.00-23.30 in Samos by negligence (external and internal) they caused the death of another and in

goes in favor of the accused according to the principle of *dubio pro reo*. It is held that the possible contributory negligence of the victim does not break the causal link between the outwardly negligent conduct and the result, any more than the converging activity of several does. (…) Enriching the above assumptions, we note that the presence or absence of a causal link was attempted to be judged based not only on the theory of the equivalent of the terms but also on the basis of the theories: of the appropriate cause (causa adaequata)-the objective attribution (objective zurechung)-the "legal term"-the "legally distinct causality"-the "physical unity of the act" and the "disturbing cause"".

particular for the fact that although they had a special legal obligation by law to provide with special care and attention, zeal, conscientiousness and devotion in their assistance to seven-year-old D.F., who had drunk almost the entire bottle of children's Depon, ensuring that they found the appropriate antidote which was PARVOLEX, and to calculate the correct doses of antidote that should have been placed on three children's dextrose sera, they failed to fulfill this obligation. More specifically, the calculation of the doses had to be done as follows:

"(…) but they omitted, although they had a special legal obligation, to read with special care, zeal, conscientiousness and devotion the instructions for use of the drug PARVOLEX or the label of the ampoule, as a result of which they believed that each ampoule contained 200 mg of the antidote PARVOLEX, to divide each times with the 200 instead of the correct 2,000 and thus deduce tenfold doses of the PARVOLEX antidote, i.e. 18-6-12 ampoules (36 ampoules found in 4 PARVOLEX boxes) instead of the correct 1.8-0.6-1.2 (3.6 ampoules) for the three doses. The result of the administration of a tenfold dose was, that the child suffered an allergic shock during the infusion of the second dose, to be urgently transferred at around 4.00 on 13.9.2000 by EMS in Athens to the "Agia Sophia" Children's Hospital and to die at around 11.00 on 15.9.2000, after having previously developed generalized convulsions and suffered significant brain swelling.
They did not foresee this result of death, but they could, based on the knowledge and experience they had from their profession, foresee it as a possible consequence of the careless, cursory and frivolous calculation of the doses of the PARVOLEX antidote and in particular of the misconception as to the content in mg of each ampoule of PARVOLEX, which could be produced by failing to read with particular care and diligence the instructions for use of the drug or the label of the ampoule and which could result in the administration of an overdose of PARVOLEX (violation of articles 28, 302 par. 1 PC, articles 24 par. 1 and 25 par. 1 of Compulsory Law 1565/1939 "on the code of practice of the medical profession", art. 9 of the LD of 15.6.1955 on the regulation of medical ethics (...))"[12] .

12 See prosecution proposal Chr. Satlani which was admitted to the will under n.

Some more cases of medical negligence from jurisprudence

1.A case of medical negligence can be found in AP 1659/2003 (Criminal Justice 2004, 386), which accepted the following: The conviction of the appellant for bodily harm due to negligence was correct and justified, who as a specialist cardiac surgeon during the surgery performed by him open heart operation to create a double aortocoronary bypass failed to remove the

19/2001 Council of Misdemeanors of Samos in, Ποινική Δικαιοσύνη 2001, σελ. 1114επ., and σελ. 1318επ., where it was given by Chr. Satlani response to the criticism of the resolution of the Council of Misdemeanors of Samos 19/2001, made by Professor M. Caiafa-Gbadi: "(...) Bearing all this in mind, I consciously did not identify in my proposal as external negligence the incorrect determination of the doses of the medicine. I will remind you that the "incorrect determination of the dosage of the drug" involves and includes error and ignorance of the correct dosages. Therefore, if we accept as their external negligence the "wrong determination of the dosage of the drug", the two doctors on the one hand did not foresee the punishable result and on the other hand they could not have foreseen it as possible however competent and enlightened they were for the reasons that I explained in the proposal and in particular why they were unaware of the dangerous nature of "incorrectly determining the dosage of the drug".Conclusion: if one accepts the "wrong determination of the dosage of the medicine" as external negligence of the two doctors, it will not be possible to establish the internal negligence and specifically their non-conscious negligence, because they were unaware of the danger of this incorrect determination. Therefore, in order not to create problems in the foundation of external and internal negligence, the external negligence should be sought (precisely because the "incorrect determination" is due to omissions!) in the overall (complex) behavior (omissions, incorrect calculation and determination of the doses of medication, externalizing the incorrect calculation and determination of medication dosages by instructing the nurse to administer it), but whose center of gravity is located in muscle inactivity-failure for doctors to look over the medication label, look and carefully read the instructions for use of the medicine and act diligently, conscientiously and carefully calculate with mathematical operations in order to find the correct doses of the medicine and possibly also in the omission of the two doctors to request information about the correct doses from experts and competent (doctors or pharmacists) to perform a correct calculation. Due to these omissions, the two doctors could, based on their knowledge and experience from the profession, because they knew their dangers, foresee as possible and possible the incorrect calculation, the excessive administration of medicine and the fatal result (...)".

surgical needle from the patient's cardiac cavity, before the surgical wound was closed, although he was required to do so according to the rules of medical science and he knew of its existence there, since he himself had used it previously. His omission resulted in damage to the health of the victim and civil plaintiff, who presented with coughing and symptoms of fatigue, while, when he was informed of the existence of the needle in his heart, he suffered a mental shock and then developed mental disorders, which developed into pathological, with the consequence of having to take psychotropic drugs to treat them.

2.AP 1370/2013:

"(...)In view of these, there is a criminal liability of the attending doctor for the involuntary manslaughter of a patient, in those cases where this result is due to a violation by him of the commonly recognized rules of medical science, for which it cannot be disputed and his action or omission was not in accordance with the objectively imposed duty of care. The special legal obligation of the doctor to prevent the criminal outcome of the patient's death derives from the law and the code of medical ethics and from the guarantor's position towards the safety of the patient's life or health created during the execution of the medical procedure, according to his profession (Λάσκαρης, 1970; Χαραλαμπάκης, 1993; Κωστάρα, 1994; Κοκολάκης, 1994; Καραγεώργος, 1996; Σακελλαροπούλου, 2007)[13]. "(...) Consequently, the

13It is not entirely clear whether any doctor has a particular legal obligation. In the past it has been expressed in legal theory that it is not correct to hold that every doctor has a special legal obligation to prevent a harmful result for the legal good, so that every time he is liable for manslaughter or bodily harm caused by negligence, committed by omission, and that only the doctor who assumed by contract or implicitly after monitoring the position of guarantor of the safety of the patient's life or health has such an obligation. According to Kostara, defines the following in art. 2, does not seem to support this point of view: "The practice of medicine is an activity that aims to preserve, improve and restore the physical and mental health of the person, as well as his relief from pain" (par.1). "The medical function is performed in accordance with the generally accepted and applicable rules of medical science (...)" (par. 3) and in art. 9: "The doctor gives priority to the protection of the patient's health" (par.1). "The doctor cannot refuse the offer of his services for reasons

defendant did not demonstrate negligence simply by the fact that he chose them, since they were executed by *lege artis* (...) but the crucial issue, in this case, is, since a large incision was made, either with the initial operation of the perineum, or with rupture of the perineum and extension of the perineotomy, if the medical monitoring and pharmaceutical coverage of the mother were adequate, due to the direct proximity of the incision to the anus and the inherent risk of its infection (…) therefore, the defendant demonstrated (unconscious) negligence because, although he was obliged due to his profession to exercise special care and attention and had a special legal obligation to prevent the criminal outcome, as a treating doctor, after he had performed the delivery, he did not carry out the required medical follow-up of the deceased after she left the clinic, examining her, when she complained of discomfort in the genital area (swelling in the abdomen, great exertion of physical forces), in view of the burdensome history that due to the embryo ulcer and the large incision of the perineotomy, which are blamed for causing infections, he did not recommend the appropriate therapeutic treatment in view of the above operations when she left the clinic, nor did he

unrelated to his scientific competence, unless there is a special reason, which makes the offer of his services objectively impossible" (par.2). In any case, if the disease does not fall under the doctor's specialty, he must provide first aid and ensure that the patient is immediately referred to a doctor with the appropriate specialty or transferred to an appropriate medical service unit. See the prosecution proposal Chr. Satlani which was admitted to the will under n. 19/2001 of the Council of Misdemeanors of Samos in, Ποινική Δικαιοσύνη 2001, σελ. 1114επ., where the following are also written: "In science, of course, the following limiting point of view is formulated: In this case, therefore, it is not correct to assume that the commented will that every doctor has a special legal obligation to prevent the occurrence of the specific result, so that each time he is accused on a case-by-case basis either for homicide or for bodily harm (negligent or possibly intentional), committed by omission. This is true only for the doctor, who has taken on the position of guarantor of the safety of the life or health of the specific patient by contract or by previous monitoring and related incorrect treatment". This view is not correct, especially because there are laws, from which the special legal obligation of doctors for physical energy arises and why else hospital doctors, who do not enter into contracts with patients and to whom they rush from the first moment in case of emergency patients, would have no legal obligation for life-saving action. According to the provisions of articles 24 par. 1 and 25 par. 1 of Compulsory Law 1565/1939 "code of practice of the medical profession" every doctor must provide his medical assistance with zeal, conscientiousness and dedication and also provide at all times the day or night the first medical aid in cases of sudden, dangerous or serious illnesses without even making the provision of this assistance dependent on immediate payment. Moreover, a duty of medical care is expressly dictated by art. 9 of the Legislative Decree of 15.6.1955 "on the regulation of medical ethics". From the above legal provisions arises the special legal obligation of doctors for life-saving action, for providing assistance to the patient as soon as they are informed about it and for paying special care and attention to her (with zeal, conscientiousness and dedication).

examine her, when she additionally complained of pain and burning in the genital area but he diagnosed a urinary tract infection over the phone and did not prescribe medication for the pain and burning, so the microbial infection found in the genital area that was created during childbirth was not treated at the initial stage, the microbial agent was transferred to the blood, and progressed the infection in simple or uncomplicated sepsis, with further formation of a thrombus in situ in the area of the deceased's brain with consequent thrombosis of the sagittal sinus and the consequence of the lack of oxygenation (ischemia) causing further brain damage, hemorrhages and seizures, from the generalized and this damage to the health of the deceased which was due exclusively to the infection of the genital area, as the only active cause caused her death (…)". With these admissions, the contested decision took the required by the provisions of articles 93 par. 3 of the Constitution and 139 of the Code of Criminal Procedure (CCP) special and detailed justification (...)".

3.AP 97/2007:

"It is substantiated by the above evidence against the defendant, according to the majority opinion, negligence from the above medical behavior that he demonstrated as an obstetrician-gynecologist responsible for her delivery on 1-12-1999. The defendant did not effectively deal with the case of this patient as required by the rules of medical science and art. The defendant for negligence in the exercise of his medical profession as supervisor A' at the regional General Hospital (…) assessed that the characteristics of the patient after childbirth, who did not feel well, were in a coma, had tachypnea and metanummatoid and hard to detect pulse and ultimately such an impalpable, had to be treated first as if they came from a cardiac problem or from a pulmonary embolism with drug treatment and in collaboration with cardiologists and anesthesiologist and the doctor and as oligemic shock due to another cause with the administration of substitutes and blood transfusion, when the patient reached a condition of cardiac arrest, and not due to internal bleeding (intra-abdominal and retroperitoneal) due to a rupture of the uterus in the cervix on the left, even though he himself found a rupture in the cervix in the region of the third hour. If the defendant observed the commonly recognized medical rules and demonstrated the special care and attention required by the above rules and his obligation as a guarantor of the legal goods of the life and health of the patients under his care and monitoring like any average doctor of the corresponding specialty he would have prevented the punishable result of his act by immediately performing a puncture in the upper portion, in which case he would have detected the intra-abdominal bleeding and would have immediately admitted the patient to the operating room to deal with her condition in order to stop the bleeding and would not have let precious time pass time during which, due to the large amount of

blood lost by the patient and the development of the disseminated intravascular coagulation syndrome, her condition was so burdened by her organs that they became so great that the subsequent exploratory laparotomy and hysterectomy that followed from 17.00 onwards were not prevent the criminal outcome, namely her death from intra-abdominal and retroperitoneal haemorrhage. Following these, the defendant must be declared guilty of the act of involuntary manslaughter attributed to him (...)".

Based on these admissions the Court of Appeal found the appellant guilty of manslaughter by unconscious negligence. Judging in this way, in his contested decision he made the above-mentioned specific and detailed reasoning (here it was obviously a case of incorrect diagnosis and omission of the appropriate therapeutic intervention).

4.AP 822/2006:

"(...) In particular, according to the above reserved opinion, the following was further proven: Immediately after the achieved muscle relaxation and while the surgeons were in the adjacent room, preparing for the operation, the defendant doctor began to proceed with the prescribed actions for the patient's endotracheal intubation, a necessary medical procedure before surgery. At this point it should be noted that there is no specific number of attempts for endotracheal intubation of the patient (it can be 5-6 or even more), but at least three, under the self-evident condition that the patient's condition remains stable and he shows no difficulties in between attempts to ventilate him with diffused oxygen from the bag used by the anesthetist. The defendant tried to carry out the aforementioned endotracheal intubation, but this attempt was unsuccessful and immediately after that she proceeded to ventilate the patient. However, after the third failed attempt and while there was a gradual drop in the saturation, i.e. the oxygen in the arterial blood, according to the indications on the monitor, initially to 90 and almost immediately afterwards to 80, a sample of the inability to oxygenate the patient with the air mask and for the same reason the bag being used was becoming hard, the defendant anesthesiologist did not immediately stop, as she should have as an experienced anesthesiologist and as required by the rules of medical science, the attempt to endotracheal intubate the patient and did not immediately call D.A., a surgeon present in the adjacent room, in order the latter to perform an immediate tracheostomy, so as to restore the patient's oxygen intake, but she tried once more to perform endotracheal intubation of the patient, also unsuccessfully, as a result of which 1-2 minutes

of an hour's precious time was lost. At this point, it should be mentioned that the aggravated condition of the patient (empyema in the bile, febrile condition), which the defendant anesthesiologist knew from the pre-operative check, which she had previously carried out, had the consequence that the oxygen intake needs were increased (approx. twice) in relation to a patient without an aggravated condition and, consequently, the time to cause irreversible damage to the patient is also shorter, due to the patient's lack of oxygenation. Immediately after the fourth failed attempt at endotracheal intubation, and while the oxygen saturation in the arterial blood had decreased so much that the readings on the monitor were no longer reliable, and the patient had become cyanotic with asystole (cardiac dash), the defendant called, shouting surgeon D.A. to perform an immediate tracheostomy, while she tried to open a hole in the cricothyroid cartilage using a special needle for this purpose, but again without achieving the patient's oxygenation in this way.The surgeon D. A. really rushed and within the minimum necessary time performed a tracheostomy, with the result that the patient was oxygenated and, in combination with massages and the administration of drugs, his cardiorespiratory recovery was achieved in approximately 3-4 minutes. However, due to the deprivation of the patient's brain from oxygen, due to the aforementioned negligent behavior of the defendant, according to the above-mentioned opinion of the Court, the patient, before the cardiorespiratory resuscitation as mentioned above, suffered cerebral ischemic damage and cardiac arrest, which resulted in irreversible damage to his health, i.e. spastic tetraparesis with difficulty walking and speaking and loss of vision in both eyes (2-3/10), as a result of which he is unable to take care of himself. Based on the admissions of the majority opinion of the two above members, the Court of the substance, with its contested decision, convicted the defendant-appellant for the criminal act of negligent bodily harm. With what it accepted above, the Court of the substance decided in its challenged decision the special and detailed reasoning required above (...)".

5.AP 436/2012:

"This particular obligation of the doctor to prevent the criminal outcome of the patient's death derives from the law and the Code of Medical Ethics, as well as from the guarantor's position towards the safety of life or of the patient's health, created during the execution of the medical procedure. It is of course assumed that there is also a causal connection between the omission and the result, which is considered to exist, in the case in which, if the imposed action was taken, which ultimately was not done, then with a probability that reaches the limits of certainty, the specific criminal result would not have occurred (…). In this case the court of substance after assessing and evaluating the evidence referred to in the decision accepted that

(…) the meningitis disease in this particular case, from meningococcus, was not fulminant, but it became fulminant as it progressed, because it was left without treatment (antibiotics, since there are many antibiotics that do not affect allergic patients). In summary, the defendant K. T. on 9-5-2003 although he had a special legal obligation from his position as a qualified pathologist who was on duty (with active duty until 21.00 pm) at the Ierapetra Hospital, according to the Code of Medical Ethics and other legislation, although he was notified at around 8.30pm by E.D.'s mother and asked to examine I.D.'s daughter, who had been in the above hospital since around 5.30pm with a high fever, headache, redness and pain in the pharynx and sensitivity in the kidney region, these were symptoms of meningitis that fell under his specialty, as well as from his guarantor position towards the safety of the life of the particular patient (based on the proximity of his position to prevent the outcome of her death), he refused to examine I.D., presuming the aforementioned (previous call to him by the on-call doctors who were in the outpatient clinics as well as that he did not find the patient anywhere when he looked for her), and after the end of his active duty he left the hospital and went to his home having further until 8.30 a.m. the following day (10-5-2003) on-call duty (state of readiness for his arrival at the hospital in case he is notified by phone by qualified doctors for incidents that would require his presence. Subsequently, in view of the fact that the patient's condition became more serious, the blood tests already showed a microbe (infection) in her body with 15,800 white cells and 94% polymorphonuclear cells, a condition treated with antibiotics, the defendant, although he was called by phone at around 11.30 with 11.40 p.m. on the same day (9-5-2003) by the specialist pathologist, E. N., in order to come himself to deal with the serious case, although he was aware of the above values of the patient's white and polymorphonuclear cells, as well as the fact that the specialist pathologist was preparing to give her an antibiotic, the defendant did not become aware despite the seriousness of the patient's condition, but also despite her young age (19 years old at the time), he omitted to go to the hospital in order to form an immediate and personal opinion of incident, so as to have an accurate clinical picture of the patient. In addition, he wrongly concluded that it was a viral infection (probably pharyngitis) and further instructed the specialist pathologist, always over the phone, not to give her antibiotics, but only antipyretics and fluids, as a result of which she remained helpless until 9.30 a.m. on the following day, 10-5-2003, and suffer septic shock, after the meningitis developed into meningococcal septicemia, and I. D. finally passed away around 4:00 p.m. of 10-5-2003 at the Intensive Care Unit (ICU) of the hospital where she was taken by ambulance, when it was too late for her life. In violation of this special legal obligation, the defendant's omission deprived I.D. of the possibility of treatment, as it is certain that with her examination and the correct and timely diagnosis of her condition, in view of her clinical

picture of the seriously ill person, with a high fever, headache, pain and redness in the pharynx, as well as tenderness in the right renal area, in conjunction with her blood and urology tests, he (the defendant) would give her an appropriate antibiotic, due to his long experience and on behalf of the treatment in the past of other cases of meningitis, in view of the fact that the patient's condition was reversible until the early morning hours of 10-5-2003 (provided she received antibiotics). The above criminal result, which the defendant did not foresee, he could foresee and avoid due to his personal scientific knowledge, his abilities and his many years of experience as a qualified pathologist. But, for lack of attention, he did not do this. After all, if it was not possible due to the insufficient infrastructure of the Ierapetra Hospital to carry out some necessary action for a safe diagnosis of the deceased's condition, such as a lumbar puncture, he could arrange for her transport by ambulance to the larger and well-equipped hospital of Agios Nikolaos Lasithi, if, of course, it had been undertaken since the night before the examination of the deceased I.D. The omission of the defendant is directly causally related to the final result (death). After these admissions, the court of substance declared the appellant-accused guilty (…) with what the court of substance accepted, it found in its decision the specific and detailed reasoning (…). Finally, the challenged decision fully justifies the existence of a causal connection (…) as it is possible and the probability reaches the limits of certainty that if the appellant, in view of his specialty and his experience, had examined it in time, a correct diagnosis would have been made and then the appropriate treatment would have been administered (...)".

6.With the AP1671/2003 decision upheld the conviction of an obstetrician-gynecologist for negligent physical injury to a newborn, who a) suspended the birthing process for several hours in order to be absent from the maternity ward for a period of time, and b) failed to perform an ultrasound in the postnatal period (indeed, he himself the doctor had induced the odins of labor by administering an odinizing serum and had also ruptured the follicle to allow the amniotic fluid to exit). As a result of the obstetrician-gynecologist's omission, the triple coiling of the umbilical cord in the neck of the fetus was not detected and an earlier cesarean delivery was not performed, as required. The

newborn was in a state of suffocation, his pulses fell below normal due to incomplete oxygenation of the brain and clinically presented a picture of "collapse", metabolic acidosis and generalized "tonic-clonic convulsions". He was immediately intubated and remained on mechanical respiratory support for 8 days. However, serious damage had already been caused to his brain, due to which he developed quadriplegia, microcephaly with overlapping sutures and static in his development, ending up at the age of four. A reasonable question that arises from the study of the decision in question is why the doctor's conviction is for negligent bodily harm and not negligent homicide, since there was a death causally connected to the doctor's negligence.

7.AP 809/2015:

"Subsequently, based on these admissions, the appellate court declared the appellant-defentant again guilty of (involuntary) manslaughter, namely that: In Thessaloniki on 5.9.2007, although she was obliged due to her status to special care and attention, due to her negligence, i.e. due to a lack of attention that she should have paid under the circumstances, she caused the death of another by omission. Specifically, the defendant, who served as a doctor at the General Hospital of Thessaloniki (...) in the capacity of an anesthesiologist, having undertaken to perform the anesthesia for nasal septum plastic surgery on the deceased D.K., a living resident (...) aged 24, did not show the required diligence and attention, by virtue of her capacity, and she did not pay the required, objectively judged, attention that a moderately prudent and conscientious doctor-anesthesiologist should and could have paid in the circumstances, even though she had the possibility based on her knowledge, her abilities and her experience, due to her specialty, to predict and avoid the result that occurred, consequently due to her negligence, as the only active cause, that the above patient died. In particular, the latter was admitted on 29.8.2007 to the ENT clinic of the (....) hospital for a planned plastic surgery of the nasal septum, with a diagnosis of scoliosis of the nasal septum, and following the necessary pre-operative examinations, the day of surgery was set for 30.8.2007, with a designated

attending doctor the N.M., otolaryngologist and deputy director of the said clinic, who would perform the operation, and his assistant M.P., who had been designated as his first assistant in the operation and at that time was completing the third year of his specialty, and the defendant-anesthetist as the doctor who would administer the patient's anesthesia and who, for this reason, had to be present throughout the operation in the operating room. However, although she knew that the anesthesia machine was of an old type and had no visual or audible airflow warning alarms or a maximum intrapulmonary pressure limit, that is, if for some reason the pressure in the ventilator's breathing circuit increased too much, it would be transmitted unhindered (without automatically stopping the pressure and supply, as would happen with similar machines of a newer type) to the patient's respiratory system, it acted as described below, without predicting that for the above causes there would be a risk of life and finally death of the patient, without showing the attention required, due to both her knowledge and experience. More specifically, the defendant underwent general anesthesia before the M.P. -a qualified doctor proceeded to the initial stage of the operation, which constitutes its safeguard, that is, the detachment of the mucous membrane of the nasal septum, and after the stage of total anesthesia was completed, the patient was covered with a drape, with only the point of the operation open, that is, the nose of the nose, and M.P. started the peeling process. However, approximately forty-five minutes after the start of this procedure before the operation proceeded to its main stage (the plastic surgery on the nasal septum), the defendant had left the area of the operating room, even though she had to, according to the rules of medical ethics concerning the duties of anesthesiologists, to be there continuously and uninterruptedly, in order to check the general condition of the patient, as well as the course and effects of the ongoing general anesthesia and to immediately identify any complication, in order to intervene in time to prevent any danger, in view of the age and the mode of operation of the above machine.

Thus, while only the anesthesiology department nurse Th.P. was in the room, the monitor showed a drop in the patient's contractions and then saturation. The defendant, who was absent from the operation area, came to the room immediately after the nurse called her because of the above problem, while at least 4 minutes had already passed since its appearance (for her to be called and come), and it was found that the patient had presented with bradycardia-arrest and showed extensive subcutaneous emphysema, covering the head, neck, chest and abdomen, with the consequence that the operation procedure was interrupted and it was established, after examinations, that the patient presented with cerebral edema (due to hypoxia-anoxia of the brain), inoculation of the tonsils of the cerebellum and complete absence of blood circulation in the vessels of the brain, of which she also died on 5.9.2007

with a diagnosis of acute pulmonary-cerebral edema, as a result of multiple organ failure syndrome. The aforementioned failure of the defendant to be inside the operating room throughout the operation, so as to constantly check both the ventilator and the indications on the other instruments intended for this purpose, such as on the monitor (indications for the functioning of the heart etc.), because she negligently treated the specific operation and the anesthesia administered as harmless, in view of the fact that the complications that may arise are known but rare, resulting in her losing valuable time and not being able, due to her absence and her consequent failure to constantly monitor the patient, to perceive in time the progress of the anesthesia and the seriousness of the situation created, so as to immediately intervene in the operation of the ventilator which was uncontrollably discharging particularly large, intolerable by the human body, quantities air into the patient's respiratory system and immediately restart the heart, which, precisely because of the air pressure created by the uncontrolled drainage, after showing a gradual drop in the contractions, presented an interruption, so that the above damage that caused the death of the patient did not occur. And because of the delay due to the aforementioned negligent behavior of the defendant in dealing with the problem that was created, which could easily have been diagnosed by her immediately if she was in the area of the operation and had, as she should have done, directed her attention to the intended follow-up the patient's organs, which showed the gradual slowing down of the heart's function until the occurrence of the arrest, but also to be treated successfully according to the above, if it intervened in time, the death of the above patient occurred as a result of the, not in accordance with the objectively imposed duty of care and attention, her actions (leaving the operation area) and omissions, which indicate her indifference, as well as her violation of the commonly accepted rules of medical science, as she treated the incident in question with insufficient attention, resulting in her patient. For her act this appellant was sentenced to two years imprisonment, which was suspended for three years. With these admissions, the court of substance made in its contested decision the required, by the provisions of articles 93 par. 3 of the Constitution and 139 of the Greek Code of Criminal Procedure, a specific and detailed justification, since it sets forth clearly, fully and without contradictions or logical gaps, the facts, which were proven by the hearing and constitute the objective and subjective nature of the homicide by negligence (not conscious, since the appellant did not foresee the result caused by her act), for which she was convicted, the evidence from which she deduced this, as well as the reasoning, on the basis of which she included them in the above-mentioned essentials criminal provisions of articles 26 par. 1b', 28 and 302 par. 1 of the Penal Code, which he correctly interpreted and applied and did not violate them either directly or indirectly, i.e. with unclear or contradictory assumptions or reasons".

8.AP 1167/2016, www.areiospagos.gr:

"(…) with what, in the combination of reasons and operative part, of the contested decision, the court of substance accepted, in the decision in question the required special and detailed reasoning, since it sets out in it with clear completeness and without contradictions the facts, which were proven by the hearing process (...) since: a) sets forth with completeness and clarity the facts that constitute the negligent behavior of the appellant and constitute a violation of the rules of medical science, finding that he during anterior cervical discectomy surgery of the A5-A6 and A6-A7 discs and spinal fusion with placement of artificial grafts and indeed in its initial phase, in the patient, K.P., (…) which was carried out with the help of intraoperative fluoroscopy and electrophysiology monitoring, did not pay the required, objectively judged care and attention,which any moderately prudent and conscientious doctor would have paid under the same circumstances, based on the commonly recognized rules of medical science, with the result that due to incorrect and careless manipulations and poor techniques the spinal cord was injured during the process of removing the intervertebral disc at the level A6-A7 due to eating of the dura and the sufferer suffers a permanent severe neurological picture (paralysis of the lower limbs and partial weakness of the upper limbs), b) specifies in detail the physical damage caused to the sufferer, with the acceptable completion of the reasoning of the decision with its operative part and c) justifies with persuasive considerations the causal link between negligent behavior and the result (…). Therefore, the relevant from article 510 par.1 lett. D of the Greek Code of Criminal Procedure ground of appeal that affects the contested decision for lack of the required specific and detailed reasoning, as to the guilt of the appellant is unfounded and rejected (...)".

9.AP 1349/2016:

"(…) declares the above-mentioned defendant, by the majority, guilty of: In Piraeus, on 11-7-2007, due to his negligence, i.e. due to a lack of care that he owed under the circumstances and could pay, caused by his omission the death of a person, without foreseeing this result of his negligent action and although he had a special legal obligation to prevent it. Specifically, being a surgeon, who undertook to perform gastric compartment surgery (otherwise vertical gastroplasty v. MASON) in S.K., who was suffering from morbid obesity, in violation of the objectively imposed duty of care and having the special legal obligation in his capacity as a treating doctor-surgeon, he omitted, after it was carried out as surgery at the clinic (...), on the one hand to place a bladder catheter in the above patient, on the other hand to give written or even explicit instructions to the on-call nursing staff for hourly measurement of her vital signs (i.e. blood pressure, contractions, oxygen saturation, respirations) and for hourly urine measurement, given that the

above measurements were mandated by the rules of medical science, since the patient did not have intra-abdominal drainage and it would have been impossible in any other way to detect any internal bleeding or other type of complication in time, and furthermore the clinic's protocol stipulated that these measurements are made in the afternoon unless otherwise indicated by the doctor, with the result that, due to the above omissions, on the one hand, the complication of the internal bleeding suffered by the patient was not noticed in time and that it became generalized, causing oligemic shock, anoxia, generalized collapse of multiple organs (brain, kidneys, liver), on the one hand to cause an irreversible disorder of the blood clotting mechanism and finally circulatory shock which causally led to her death, which occurred on 12-7-2007. With what the court of substance accepted, according to an admitted complementarity of rationale and operative part, it made in its contested decision the required, by the above-mentioned provisions of the Constitution and the Code of Criminal Procedure, a special and detailed reasoning, citing all the elements, which make up the legal form of the crime of manslaughter by negligence, since they set forth in it, with completeness, clarity, without contradictions or logical gaps and in a way that allows for appellate review, the facts, which were proven by the hearing process and constitute the objective and subjective nature of the crime in question, for which the appellant was convicted, the evidence, from which he deduced these incidents, which it follows that the superior court evaluated in their entirety without selective assessment of the evidence and reasoning, based on which he made subject to the substantive criminal provision of art. 30 2 par. 1 Penal Code, which he correctly implemented and did not violate even indirectly with incomplete or unclear or contradictory reasons and thus did not deprive his decision of a legal basis (…). For these reasons he rejects it from 15-5-2015 application (made by declaration, delivered on the same day to the Prosecutor of the Supreme Court) of F.G. of S., resident (…) for the annulment of no. 1539, 1629/2014 of the decision of the Three-member Court of Appeal of Piraeus (…)".

Convergent negligence of more than one doctor

It is possible, as in other cases of professional employment (e.g. an architect, an engineer and a contractor who work together and build an apartment building without observing the rules of building and without the appropriate static and anti-seismic protection) to work together to deal with a medical incident

more than one doctor *de facto* or as a medical team and that all or some of them are responsible for the death caused or the resulting physical damage, as long as a causal connection is established between the act (action or omission) of each of them and the resulting outcome[14]. In fact, in the context of modern telemedicine it is possible to have the above cooperation without the joint local presence of the cooperating doctors being necessary, while this cooperation can take place at different times (Στασινόπουλος, 2004).

Usually, a medical collaboration takes place in medical and surgical procedures, when the cooperation of surgeon and anesthetist is absolutely necessary. In these cases, intractable issues of apportionment of any criminal responsibility arise, which are resolved based on proven facts, the code of medical ethics and the exact cause that brought about the death or physical injury. As long as it is not a purely "technical" error on the part of the surgeon (e.g. accidental injury with the scalpel of a vital organ), the jurisprudence usually recognizes convergent negligence of surgeon and anesthetist, because the former has the overall responsibility and supervision for the good outcome

14AP 830/2009: "It is assumed that there is also a causal connection between the omission and the result, which is considered to exist, when we can imagine that, if the mandated action was done, which was not done, then with a probability that approaches the limits of certainty, the specific criminal result would not occur. When the crime of manslaughter by negligence is the result of the contributory negligence of several persons, each of them is judged and liable independently and seperately of the others according to the reason for the negligence shown by him and as long as the final result is in a causal link with it (...)".

of the project, while the latter is charged with maintaining the vital functions of the patient's organism. In particular, the presence of the anesthetist in the pre-operative, operative and post-operative stages is linked to his obligation to monitor the smooth functioning of the patient's vital organs, while his more specific obligations include successful anesthesia with the correct choice of the type and quantity of the drug throughout the operation, his awakening and resuscitation. However, the surgeon will not be without responsibility, if e.g. the anesthetist accidentally administered too much anesthetic and the patient showed visible distress. Thus, the decision of the Supreme Court 1438/2001 (see Criminal Reason 2001, 1914) considered as correct the conviction for manslaughter by convergent unconscious negligence of the doctors, because the anesthesiologist during a tonsillectomy operation suddenly gave the minor patient a larger dose of narcotic than the allowed, while the surgeon, although aware of her suffocating symptoms, failed to stop the operation, resulting in death in the operating room (Χαραλαμπάκης, 2016)

AP 230/2015 www.areiospagos.gr:

"Finally, when the crime of negligence is the result of the negligence of several persons, each of them is judged and liable independently and separately of the others due to the negligence shown by it and since, however, the final result is in a causal link to it. The act or omission of the perpetrator is in a causal link with the result that occurred when it, according to common understanding, is the one that directly caused the result and is therefore directly causal to it (Καϊάφα-Γκμπάντι, Παπαγεωργίου,

Συμεωνίδου-Καστανίδου, Ταρλατζή, Τάσκου, Φουντεδάκη, 2013)[15]. It is sufficient, in order to establish liability, that the act or omission was one of the productive conditions of the result, without which it would not have occurred, regardless of whether other conditions contributed, immediately or indirectly (...)".

AP 1026/2016, www.areiospagos.gr:

"When the crime is the result of the converging negligence of several persons, each of them is responsible independently and separately of the others, within the context of the negligence they demonstrated and as long as the final result is in a causal link to her. According to the principle of the equivalent of conditions (*conditio sine qua non*), which prevails absolutely in criminal law, every condition of the result is characterized as a cause. Therefore, if among the productive conditions of the result in the specific case human action or abstinence from a specific action is included, then there

15In recent years, the Supreme Court (AP 183/2006) has been moving in this positive direction, which in the case of the action of several persons in relation to a harmful result seems to go beyond the theory of the equivalent of terms, introducing the element of immediacy: then only responsibility for an effect can be unequivocally attributed to someone when his action is actually directly causal to it. Thus, the Supreme Court now very often uses the following position: "If several acts or omissions of various persons contributed to the occurrence of the result of the negligent death of the victim, then for the determination of the responsibility of each individual each separate action or omission is causally linked to the result, since this, according to common understanding, is, alone or together with another person, in a direct causal relationship with the result". Direct causation exists when the externally negligent action or omission of the doctor decisively co-determined the occurrence of the result, in the sense that within it the danger that it set in motion was realized, even if there was also a dangerous action or omission of another doctor. The anesthetist who is accused of negligent bodily harm is the anesthetist, who a) when administering anesthesia to the patient, used the mask anesthesia method not indicated for the case (instead of the safe and mandatory method of intubation), b) did not check against during the operation the oxygenation of the patient, the ventilation of the lungs and the color of the blood (despite the obstetrician-gynecologist's comments about dark blood and although the monitor showed a gradual decrease in contractions) and c) he delayed intubating the patient. As a result of the negligent behavior of the anesthesiologist, the patient suffered a narcosis, as a result of which she remained in a coma for 12 days due to insufficient oxygenation of the brain (anoxia) during the operation. When he came out of the coma, he had severe neurological damage ("neurological deficits, organic psychosis, amnesic syndrome and aphasic disorders"). The decision is memorable, as in many places it separates the action of the accused anesthesiologist from that of the obstetrician-gynecologist who performed the caesarean section: the obstetrician-gynecologist informed before the operation began about the previous state of the parturient, that is, about gestational diabetes and medication received. In particular, it is emphasized that he repeatedly pointed out to the anesthetist the alarming color of the blood and yet the latter was indifferent.

is a causal connection between the action or omission and the result, even if at the same time or later another human action came together to produce the result or failure. Thus, even where there is concurrent negligence on the part of the intervener, who is often also the victim, this fact does not prevent the attribution of responsibility to the perpetrator[16]. Only when the negligence of the victim or a third party contributed exclusively to the occurrence of the damaging event, the objective causal link between the act or omission of the perpetrator and the result is interrupted (...)" (Σατλάνης, 2019)[17].

AP 1141/2010:

"In view of these, the criminal liability of a doctor for involuntary (unconscious) manslaughter, in the exercise of his profession, exists in those cases where this result is due to a violation by the doctor of the commonly recognized rules of medical science for which no doubt can arise and his action was not in accordance with the objectively imposed duty of care. Furthermore, in the sense of the aforementioned art. 28 of the Penal Code, negligence is distinguished into non-conscious, in which the perpetrator, due to a lack of due care, did not foresee the punishable result caused by his act, and conscious, in which he foresaw that from the his behavior might lead to this result, but he believed he would avoid it. In view of this distinction, the

16In these cases, however, there may be an exclusion of the objective attribution of the result to the perpetrator due to the subordination of the historical event to a foreign area of responsibility, so that the objective nature of the crime will not be fulfilled for the original perpetrator and there will be no punishment for him (see below).

17In these cases, more precisely, the causal link is not interrupted, which still inevitably exists, but the primary element of the crime of negligence, i.e. external negligence, is not present, and thus the objective attribution of the result to the person judged as the perpetrator is excluded (see below). Example: The result of the death of the motorcyclist and the passenger is not attributed to the driver of the lorry who was following the rules of the Road Traffic and without maneuvering at the right end of the roadway and traveling at normal speed, in the left rear wheel of which the victims were wedged, when another motorcyclist tried to overtake the lorry and collided with the oncoming victims around the middle of the roadway and within their traffic stream. Here the result is the work of the deceased motorcyclist who did not ride near the right edge of the roadway (art. 16 par. 1 sec. b of the Code of Road Traffic) and mainly of the surviving motorcyclist who overtook dangerously and without prior control, entering the opposite flow of traffic (articles 16 par. 5, 17 par. 1 of the Code of Road Traffic), but in no case is it the work of the truck driver, even though there is an undoubted causal connection between his behavior and the result of the death. The lorry driver did causally foresee the fatal result (there is a causal link between driving the lorry and the death) but he did not demonstrate external negligence and did not cause any unlawful danger to the legal good of life by external negligent conduct, given that the driving of a vehicle under the rules of the Code of Road Traffic, it constitutes a dangerous action permitted by the legal order.

court of substance, when pronouncing a conviction for a crime of negligence, must state in its decision clearly which of the above two types of negligence occurred in the specific case, because if it does not state this clearly or accepts both species creates an ambiguity and a contradiction, which renders impossible the appellate review for the correct or non-application of the substantive criminal provision and thereby establishes grounds for appeal (…). In the present case (…) the Three-member Court of Appeal of Thessaloniki, which issued it, accepted (…) that from the evidence he mentions by type: Z, living resident (...) visited the private clinic (...) on 28-11-2003, complaining of pains felt in the right abdomen with a reflection in the scapula and asked to be examined in order to diagnose their cause. In the previous days, due to the same problem, he had visited the Hospital (…) and the Greek Social Security Agency-IKA clinics where he underwent an examination trends at the suggestion of the pathologist (…) The first defendant who served as a surgeon in the above clinic, after clinically examining the defendant, diagnosed that he was suffering from acute cholecystitis and decided that in order to treat the problem, he had to be operated on immediately the next day. Thus, the patient was immediately admitted to the above clinic in order for him to undergo a cholecystectomy with the method of laparoscopy, which is one of the medically accepted methods of surgery. However, as it turned out, the doctor in question was satisfied with the clinical examination of the patient, without ordering further tests, as is required in similar cases to ensure a safer diagnosis. In particular, he failed to perform an ultrasound on the patient and to order him to undergo new biochemical blood tests (…). It also emerged that in the case of acute cholecystitis, which is a form of inflammation, it is contraindicated to submit the patient to immediate surgery and is treated until it subsides with medication. It was further shown that both the first and the second defedant anesthesiologist of the same clinic, who would work with him during the operation (...), were content with what he verbally told them about his general state of health (...) without consulting as they should his health booklet, so that they have full information about his previous state of health, since it is reasonable that the patient under the pressure of the specific moment being examined does not remember or evaluate any previous health problem that he had been introduced. In particular, it should be said that the second defendant failed to take a full anesthetic history as required by medical science and in particular to, among other things, examine the patient's head and neck, observe the size of the tongue and the opening of the mouth and to classify the patient according to the Mallampati scale, to observe the mobility and size of the cervical spine, the deviation of the trachea from the midline, any masses or swellings of the neck, clavicles and carotid murmurs after a relevant hearing. With these actions, the second defendant would certainly have collected valuable information that would fully ensure the successful

administration of anesthesia to the patient and the avoidance of side effects, since she would have taken into account how the patient responds to the sedative and analgesic drugs, the ease of ventilation and the patency of this airway, the sizes of the blade of the laryngoscope and the tracheal tube that will be used during anesthesia, any difficulties in catheterization, peri-anesthetic complications, such as drug interactions-occurrence of adverse effects, cardiopulmonary compatibility and prolonged awakening-resuscitation time and occurrence of postoperative nausea and vomiting. Then, the next day and at approximately 8.30, the patient was admitted to the operating room, after the second defendant had previously subjected him to pre-anesthesia by administering drugs (atropine) in a small dose to his body. While waiting for the effect of these, the second accused, using the laryngoscope, tried to insert the tracheal tube through the respiratory tract so that the patient could continue to breathe with the supply of oxygen, but during the execution of the said medical operation, caused him a retropharyngeal hematoma which blocked the patient's respiratory tract, as a result of which he experienced a large bradycardia and a large drop in pressure. Prior to this condition in which the patient had fallen and in order to avoid worse results that would lead to the patient's end, the second defendant administered adrenaline and tried to administer oxygen by intubation, but due to the fact that she had no visibility into the larynx as a consequence of the induced hematoma in combination with the patient's anatomical problem [short neck], which she should have identified during the pre-taken anesthetic history, she inserted the tube into the patient's esophagus and not into the trachea. This wrong action of hers, the second defendant, did not realize in time, that is within two minutes at the most, which resulted in the untimely delivery of oxygen to the patient's body, due to which he was led to a state of cyanosis which in turn made imperative the need for the intervention of the surgeon, i.e. the first defendant, in order to finally achieve the supply of oxygen to the patient's body by performing a tracheotomy on his part and, in the manner that is medically appropriate, to achieve his resuscitation. At this point, and in support of the immediately above, it should be noted that, according to the forensic report prepared by (...), the patient's lungs were found to be “collapsing”, which shows that the patient had a normal heart function but not of breathing. The second defendant, now realizing the danger to the patient's life, requested the immediate intervention of the first defendant who was in the next room, who, realizing the critical nature of the situation, rushed to the patient's side and using the surgical scalpel, immediately began performing a tracheostomy, so that through it the immediate supply of oxygen to the patient can be achieved. However, due to the previous hematoma, it was difficult for the first accused to find the trachea, who during the said medical procedure, which was obviously done in a hurry and perhaps in a state of panic, and in any case not with the required

composure, clumsily handled the surgical tool (scalpel), with the consequence that the patient's carotid and jugular veins were eaten, which resulted in hemorrhagic shock that led to his death. In view of the incidents proven above and in accordance with what was developed in the preceding legal consideration, the Court is led to judge that the final result (death of the above-mentioned patient) is due to the negligence of both defendants, which consists in the fact that they, during the execution of the above medical procedures, acted in violation of the commonly recognized rules of medical science for which there can be no doubt and their actions were not in accordance with the objectively imposed duty of diligence, and are causally linked to the final result, in view of the fact that, as is accepted, the previous negligent behavior of the second defendant (which would inevitably lead to the death of the patient and made the immediate intervention of the first one mandatory) is characterized as a cause even in the event that another subsequent negligent human action was involved in producing the result (…). In particular, the first defendant's negligence consists in recommending that the patient be submitted to surgery, without first, using the appropriate scientific methods, having clear knowledge of the patient's condition that would necessitate his submission to surgery, and furthermore while performing a tracheostomy, he caused the carotid and jugular vein to be eaten with his scalpel on the left, causing the patient to go into hemorrhagic shock, and the second during anesthesia, he failed to successfully intubate the patient to ensure the supply of oxygen to him, a fact that she realized belatedly and made the first defendant's intervention imperative. Therefore, both defendants must be declared guilty of the criminal act of involuntary manslaughter attributed to them as set forth in the operative part of the present case."Following these, the Court of Appeal found the appellant doctors, guilty of the crime of negligent homicide and imposed on each of them a prison sentence of twenty (20) months, the execution of which was suspended for three (3) years. With what the court of substance accepted, it made the required special and detailed reasoning in the contested decision (...)".

The theory of the objective attribution of the result to the perpetrator

In the science of German Criminal Law, during the last thirty years, the theory for the objective attribution of the result of the act to the perpetrator (*Die objective Zurechnung des*

Handlungserfolges) or for the attribution to the objective nature of the crime (*Die Zurechnung zum objektiven Tatbestand*) has experienced a rapid development. This theory was mainly developed in relation to crimes of negligence and in general it means that in substantive crimes or crimes of result the resulting outcome is only then considered as a direct consequence of the behavior and as the work of the perpetrator (the perpetrator), when between this behavior and the result there is an objective, real and not accidental, causal link. The objective attribution of the result of the act to the perpetrator constitutes one of the unwritten elements of the objective nature of the crime (Μυλωνόπουλος, 2007; Φαρσεδάκης, Σατλάνης, 2013; Μπουρμάς, 2017) If this is not established, the objective condition is not met and together with the criminal or special or statutory condition or form of the crime, there is no crime, no punishable offense. The above theory gives correct and fair solutions based on criteria and principles and not intuitive solutions. Doubts about the existence of the objective causal link between the conduct of the perpetrator and the subsequent result are in favor of the perpetrator *ex officio in dubio pro reo* (Μαργαρίτης, 2012; Φαρσεδάκης, Σατλάνης, 2013)

However, in order for such an objective, real and not random causal link to exist, it should be established: a) a causal connection between behavior and result according to the theory

of equivalent terms (*conditio sine qua non*) held in science and jurisprudence and in addition, beyond causation which is the first necessary condition for the objective attribution of the effect to the perpetrator, b) an internal and not superficial link between the conduct of the perpetrator and the result. This internal link exists when the behavior of the perpetrator (action or omission) caused an illegal (unproved and not permitted by the legal order) risk to the material object of the act (the specific legal good) and this risk was realized in the specific future harmful effect.

There are of course cases in which there is talk of permissible risky action, such as e.g. the operation of factories with dangerous machinery in compliance with the safety rules for workers, or the driving of cars on the roads in compliance with the rules of the Road Traffic Code, or the performance of medical surgery in compliance with the recognized rules of medical science. In these cases, there is no external negligence, which is the primary element for establishing the crime of negligence. If there is no external negligence, which is primarily investigated, all further investigation ceases (Μυλωνόπουλος, 1984; Roxin, 1985; Σατλάνης, 1999; Γιαννίδης, 2005; Μυλωνόπουλος, 2007; Βαθιώτης, 2007; Χαραλαμπάκης, 2010; Krey, Esser, 2012; Wessels, Beulke, Satzger, 2016; Σατλάνης,

2019)[18].

The objective attribution of the result of the act to the perpetrator is excluded and thus the objective and at the same time the legal status of the crime is not fulfilled, there is no crime and there is no criminal penalty due to the failure to establish external negligence (a fundamental element in the crime of negligence), as well as in the following cases: (Σατλάνης, 1999; Σατλάνης, 2019).

1.Guilty of the non-avoidance (unavoidable) of the result even in the case of observing the legal alternative behavior: There are cases in which the perpetrator did not pay due attention, that is, he demonstrated some form of external negligence, violating a rule of care and thus setting with his behavior in motion an illegal risk, but in hindsight it is established, that with certainty or even with a probability reaching the limits of certainty, the same result that was causally caused by his outwardly wrongful behavior would occur (would be inevitable), and even if the perpetrator had behave diligently.

18For Greek jurisprudence, the Theory of objective imputation still remains an almost foreign concept. The only cases in jurisprudence, in which there is talk of the objective attribution of the result to the perpetrator, see in a prosecution proposal Chr. Satlani in the resolution n. 12/1994 Council of Misdemeanors of Cos in: Ποιν Χρον 1994, σελ. 680επ., 682επ., prosecution proposal Chr. Satlani in the resolution n. 24/1996 Council of Misdemeanors of Cos in: ΠοινΧρον 1996, σελ. 1493επ., 1499επ., prosecution proposal Chr. Satlani in the resolution n. 19/2001, Council of Misdemeanors of Samos in: ΠοινΔικ 2001, σελ. 1114επ., 1121, 1317επ., resolution of the Aegean Board of Appeals n.49/2008, ΠοινΔικ 2008, σελ. 833, decision of the Three-member Criminal Court of Athens n.13873, 14317, 18664 and 19626/2009, n. Β 2009, p. 1466.

In these cases, in which the result would be objectively inevitable, and even if the perpetrator demonstrated the "legal alternative behavior", this cannot be considered as the work of the perpetrator, precisely because on the one hand he cannot dominate the causal path and prevent it, and on the other hand, the risk that was set in motion by the negligent behavior of the perpetrator does not materialize, but another risk, the creation and development of which the perpetrator cannot control and stop. This other risk is the actual cause of the effect and not the external negligence of the perpetrator. To clarify the above, the following example should be mentioned here: A goes through a residential area at a speed of 60 kilometers per hour, exceeding the maximum permitted speed limit of 50 kilometers per hour and thus going outside the limits of the permitted dangerous action. His behavior therefore has the stigma of external negligence, since it is presumed that he will not be able to brake in time or take a successful evasive maneuver in the event of an emergency, and since he thus creates the risk of colliding with another vehicle or dragging a pedestrian and causing death or physical damage. Quite suddenly and unexpectedly, a ten-year-old boy, who was being chased to prison by his mother, is thrown into the street and in front of him from the door of his house. A brakes immediately but fails to avoid the fatal impact. It is found, however, that A could not have avoided the impact

by taking an evasive maneuver or braking immediately, and death would have occurred under the circumstances, even if he had been traveling at the permitted speed of 50 kilometers per hour, so that death it is not his own doing but that of the victim himself and the persons (parents etc.) who should have taken care of the minor boy (Σατλάνης, 1999; Μυλωνόπουλος, 2007; Μαγγανά, Καρατζά, 2007)[19]. Thus, according to AP 513/1969 decision, the surgeon, who was absent but was notified and arrived in ten minutes in order to operate at the hospital, should not be punished, to which the deceased had been transferred in a desperate condition with uncontrollable bleeding from a very serious accident (he was bleeding and the brain, and a great quantity of blood had been lost), because he could not bring him back to life, even with the utmost care and efforts (Χαραλαμπάκης, 2016)[20] .

2.Contributing the historic event to a foreign area of responsibility: The persons who carry out certain activities or are charged with the duty of supervision to prevent risks

19The same result was reached in a similar case of the Court of Appeal of Athens 2037/2005, ΕΣυγκΔ 2006, 97: The fatally injured driver K.M. 26 years old, who had stolen the car and did not have a driver's license, lost control of the car due to excessive speed and entered the oncoming traffic. In this, S.R. was riding in a truck, who was driving at 60 instead of the permitted 50 kilometers per hour and even possessed a category B capacity license and not the one required for the specific category C truck. In a similar case the Single Member Court of First Instance of Larissa 155/1996, ΕΣυγκΔ 1997, 105, judged not co-responsible the driver who drove at 60 km per hour instead of the permitted 40.

20Where the decision of the Supreme Court is mentioned together with other decisions and reference is made to the “legal alternative behavior” and the “objective attribution of the result”.

(doctors, police officers, teachers in relation to students, drivers, etc.) have their own area of responsibility for monitoring, combating and removing risks produced by the related activity, as well as for preventing the occurrence of the corresponding results, so that those outside this circle of responsibility do not have to be held accountable for the occurrence of these results.

The consequence of this is that the perpetrator is not basically responsible (except in cases in which retroactive criminal liability is allowed) for this criminal result that was directly caused by the negligent or intentionally harmful behavior of someone else from the above or other involved persons, since the historical event during its causal path and in particular at the time of the occurrence of the result had already fallen exclusively within the area of responsibility of this person, so that dominant or domineering negligence (or intent) can be spoken of the intervening perpetrator. In the cases of the historical event being assigned to a foreign area of responsibility, the initially negligent person no longer has the sovereignty over the causal path of the event to the result and cannot prevent it, while the result is not the illegal risk that he set in motion but a other risk emanating from another person. For these reasons, the result cannot be considered as the work of the initially negligent person and cannot be objectively attributed to him. For example, the doctor who instructed the

experienced nurse to inject the patient will not be liable if she mistakenly used another drug, resulting in the patient's death. Here the historical event had now fallen under the responsibility of the experienced nurse, while at the same time the doctor was entitled to believe that she would prepare the injection correctly (principle of trust) (Σατλάνης, 2019)[21]. Also, in a medical

21Where, among other things, the following are also mentioned: "(...) Looking back on the negligent behavior initially demonstrated by someone to establish criminal liability is prohibited in cases where the historical event belongs to a foreign area of responsibility. (…) Regarding the well-known theory of the prohibition of retrospection (Regressverbot) the following should be pointed out: Basically, it is forbidden to establish the liability to look back to the negligent behavior of the original perpetrator, when the historical event with the harmful effect has now been subject to external area of responsibility and specifically in the area of responsibility of the intervening person or persons or in the area of responsibility of the victim, whenever there is a case of intentional self-risk or self-harm (see about it immediately below), in which case a lack of the possibility of mastery over the causal path to the result is established or, in another expression, of the ability of the original perpetrator to control the conditions for the occurrence of the result and the impossibility of aborting or preventing the future result. As an exception, it is allowed to establish the punishment by going back to the behavior of the original perpetrator (in his external negligence), whether the subsequent act is done with intent or negligence, as long as the initial negligence was also accompanied by internal negligence, i.e. it was possible to diagnose and predicting the future outcome and primarily the tendency towards criminal behavior of a third party or towards self-harm or self-endangerment of another: Thus, retrospection will be allowed, in the case where the medical specialist assigned the inexperienced or drunken nurse to prepare and administer the injection and she mistakenly used another drug or instructed the medical specialist to perform a certain medical surgery operation and he cut the patient's vital organ with the scalpel, in which case the medical specialist will also be liable, because he could foresee as a possibility and avoid the mistake of the nurse or medical specialist ("negligence of assign")." In AP 1114/2016: "(...) Moreover, it is committed to this according to art. 21 par. 5 of L. 3418/2005 (Medical Code of Ethics), according to which the doctor may entrust care to the nursing staff, if he judges that this is in the patient's interest, but he must be sure that the person to whom a specific task is assigned is capable of take it over. In this case, he must provide all the information necessary for the performance of the task regarding the patient and the specific procedure. The physician remains responsible for managing the patient's care. In this light, the defendant, in violation of his duty of care, did not at least provide express and clear written instructions for the safe, according to medical rules, medical procedures to be performed on a specific nurse, who had the legal conditions (...)".

operation (heart surgery), in which a cardiac surgeon and an anesthesiologist work together, the latter, who is tormented (but without showing anything!) by his wife's infidelities, instructs the nurse to administer the injection he has prepared with overdose of anesthetic drug, which results in the death of the patient. The heart surgeon and the nurse, who had no reason to doubt the sobriety and scientific abilities of the anesthetist, unconditionally accepted his participation in the operation (they could not diagnose its danger and predict the patient's death),while the cardiac surgeon acted completely in accordance with the commonly recognized rules of cardiac surgery, the nurse simply carried out the order assigned to her. Certainly the heart surgeon is not charged with external negligence. The nurse, however, is burdened with the outwardly depraved behavior of injecting an overdose of anesthetic. However, the patient's death cannot be objectively attributed to her. Death is not her doing. The medical error and the punishable result come exclusively from the area of responsibility of the anesthesiologist, who carried out a dangerous for the patient organization of his field of action beyond the limits of permissible dangerous action. Here the principle of trust basically applies, according to which everyone does not have to consider the possibility of another's error but has the right to rely on the lawful behavior of others and to trust others that they too

will observe the rules of diligence and not dangerously organize the field of their area of responsibility, since of course he has not perceived indications that testify to the error of the other.

3.Another case, in which the illegal risk set in motion by the perpetrator is not realised, but another risk, is the case of free and responsible self-risk or self-harm. Here finally a new and independent risk is realized, namely the risk that sets in motion with full awareness of its dimensions and with a will free from defects the victim, who now has the sovereignty over the historical event and controls the conditions for the occurrence of the result. This case constitutes, in my opinion, a subcategory of the historical event being assigned to a foreign area of responsibility. Here again the initially negligent no longer has dominion over the causal path to the result and cannot control the occurrence of the result by taking actions that would tend to prevent it.

The resulting outcome is solely the work of the victim. He, who freely and responsibly exposes himself to danger, excludes the responsibility of those persons who opened access to the danger. However, self-endangerment or self-harm acts as a reason for excluding the objective attribution of the result to the perpetrator, when it takes place with knowledge and will, i.e. when the following conditions are met: a) The victim is fully aware of the dimensions of the risk and of the existing risks

arising from his behavior, which only happens when he is fully informed about the existing dangerous situation, and does not happen when the inherent danger of his behavior is hidden from him or appears to him as insignificant, either unintentionally or intentionally. b) The victim under the specific conditions and circumstances in which he found himself had the capacity to perceive the dangerous and harmful nature of his behavior and to act in accordance with this perception. As a rule, he does not understand e.g. a fourteen-year-old minor or insane or under the influence of alcohol or drugs finding the dangers inherent in riding a motorcycle (Μυλωνόπουλος, 2007; Βαθιώτης, 2007; Φαρσεδάκης, Σατλάνης, 2013; Χαραλαμπάκης, 2016)[22] c) The victim commits the dangerous act and endangers himself

22According to art. 11 par. 3, 4 Law 3418/2005 (Code of Medical Ethics) the following apply: "3. Particular attention must be paid when informing about specific operations, such as transplants, medically assisted reproduction methods, gender reassignment or reassignment operations, aesthetic or cosmetic operations. 4. If the persons do not have the capacity to consent to the performance of a medical procedure, the doctor informs them to the extent that this is possible. It also informs the third parties, who have the authority to consent to the execution of this act, according to the distinctions of the next article". Of course, if it is an urgent case, in which the patient is e.g. guilty of a traffic accident in coma, anesthesia and aphasia and his relatives cannot be found to consent, the competent doctors will be able to proceed with the dangerous medical-surgical operation in order to save his life, observing the commonly recognized rules of medical science, so, if the operation fails and death or bodily harm results, they will not be liable based on a special reason for removing the tortfeasor, called "presumed consent of the victim"". Moreover, according to art. 12 par. 3 of Law 3418/2005 (Code of Medical Ethics), the following apply: "Exceptionally, consent is not required: a) in urgent cases, in which appropriate consent cannot be obtained and there is an immediate, absolute and urgent need to provide medical care, b) in the case of a suicide attempt or c) if the parents of a minor patient or the patient's relatives who cannot for any reason give consent or other third parties, who have the power of consent for the patient, refuse to give the necessary consent and there is a need for immediate intervention, in order to prevent the risk to the patient's life or health (...)".

voluntarily, of his own free will, completely freely and without depending on another (Σατλάνης, 1999).

For example, K is injured in a car accident by X who violated his priority and is rushed to the hospital for first aid but refuses to receive a life-saving blood transfusion because of religious beliefs or because of malicious disposition and purpose, because he himself is a cancer patient and dying, for the children and his wife to collect a very large compensation from the insurance company. Here, in case of death, X will be liable only for bodily harm due to negligence, while the doctors, who were called to deal with the incident, since they informed the patient about the risks of not having a blood transfusion, will not have any responsibility for the subsequent death, if they remain idle due to the resistance displayed by K. (Σατλάνης, 1999; Φαρσεδάκης, Σατλάνης, 2013). However, in the latter case, exceptionally, in my opinion, they will be criminally liable if they fail to act immediately, because according to art. 2 par. 1, L. 3418/2005 Code of Medical Ethics "The practice of medicine is an activity that aims to maintain, improve and restoration of the physical and mental health of the person, as well as the relief from pain" and according to art. 9 par. 1, L. 3418/2005 Code of Medical Ethics "The doctor gives priority to the protection of the patient's health", if, however, the refusal of the patient to receive emergency medical care and services would clearly amount to

attempted suicide[23].

Liability of junior doctors

"A question arises:[24] Are the junior doctors responsible? The issue has not been systematically handled in jurisprudence and science, while junior doctors are usually treated leniently[25]. My view is that junior doctors should not always be exempted from liability in the event of negligent death or personal injury, because to do so would be contrary to the fact that they are paid (including on-call duties) for as long as the specialization lasts (5-6 years), like the newly appointed primary judges. Thus, the junior doctor will be liable mainly when he failed to notify the on-call specialist in time, even though he could have found and notified him, when he himself undertook to carry out a diagnostic or therapeutic operation and did not refer the case to a specialist ("negligence they undertake"), when he failed to provide first aid based on the knowledge of general medicine acquired at the University or to perform actions that do not

23Article 12 par. 3 B L. 3418/2005.

24What follows is precisely understood in the prosecutor's proposal Chr. Satlani which was admitted to the will under n. 19/2001 Council of Misdemeanors of Samos, in Ποινική Δικαιοσύνη 2001, pp. 1114ss.

25See prosecution proposal Bessa which was accepted in the will n. 119/1985 Council of Misdemeanors of Volos, in ΠοινΧρ 1985, 738ss, prosecution proposal of Papageorgiou in the will n.2/1998 Council of Misdemeanors of Kavala, in Αρμ 1998, 219ss, where the junior doctor was referred by the Council with the medical specialist for involuntary manslaughter.

require special knowledge or when he acted in violation of the instructions and orders of the specialist doctor. However, I believe that the junior doctor should not be objectively attributed the criminal result, when a specialist doctor serving in a hospital with the rank of director, deputy director, curator A or supervisor B or when the competent authorities have undertaken to deal with the incident in accordance with the hospital's operating regulations, because then the historical event has fallen under the responsibility of the specialist or competent doctor, unless of course they clearly violate the commonly recognized rules of medical science and this falls under the perception of the junior doctor, so the later will be obliged by his intervention to act as required by the duty of medical care and diligence". In support of the above opinions, I consider it appropriate to incorporate in my proposal the following written in relation to the special legal obligation of the doctor to provide assistance to the patient: "However, in order for the doctor to be held responsible for not providing assistance, other conditions must also be met. The first is that the condition falls within the doctor's area of expertise. If this is not the case, the doctor is not completely relieved of his obligations, but must, on the one hand, take the first necessary actions (diagnosis, first aid), and on the other hand, take care of referring the patient to a doctor of the appropriate specialty. The second is that the patient has

addressed the specific doctor. If it has been assigned to a health institution (clinic, hospital, etc.), the doctor's obligation is established only if he is competent to undertake the treatment of the specific patient in accordance with the institution's operating regulations (…)" (Χαραλαμπάκης, 1993; Χαραλαμπάκης, 2016)[26].

AP 830/2009:

"(...), on 12-1-2002 and 13-1-2002, the appellant being a paediatric junior doctor who was on call at the University Pediatric Clinic of the Regional General Hospital (…) and obliged, as a result of his profession, to exercise special care and attention, having a special legal obligation to prevent of the criminal result of the manslaughter of the hospital patients through his negligence (…) brought about the death of the 28-month-old infant patient Θ1, without foreseeing this result. Specifically, although the above-mentioned 28-month-old patient Θ1, due to the seriousness of his health condition, was admitted in the morning hours of January 12, 2002 to the University Pediatric Clinic of the Regional General Hospital (...) following the pediatrician's recommendation and curator A' (...) who examined the aforementioned toddler on the same day at the outpatient clinics of the same hospital for follow-up and further treatment due to the seriousness of his health condition and his bad clinical picture, presenting a high fever of 39 degrees Celsius, who reported from 48 hours, expiratory grunting, respiratory difficulty, tachypnea, laryngeal voice tone, tonsillitis with parythial erythema with a whitish coating, left pleurodynia which was indicative of the presence of pneumonia and although it was established by the medical tests of his blood that he had reduced white blood cells (leukopenia-neutropenia), i.e. precursor symptoms of sepsis, the defined as the above-mentioned capacity

26The author emphasizes the responsibility of the junior doctor in the case, in which the knowledge of medical science is sufficient for the diagnosis of the disease or the therapeutic intervention on the patient without requiring the specialist's knowledge and experience, the obligation of the junrio doctor to notify and inform the on-call or supervising specialist doctor and not to undertake alone the treatment of the incident and his obligation to provide first aid and to act the elementary medical operations that do not require specialized knowledge and experience (among them and diagnostic tests), while accepting that the criminal liability of the junior doctor ceases when the incident has now been brought under a foreign area of responsibility, specifically the area of responsibility of the medical specialist or other competent doctors.

of on-call hospital doctor at the above-mentioned Pediatric Clinic during the above-mentioned period of time, although he had to due to the profession of a doctor and was able to demonstrate the attention and care imposed by objective judgment that any average prudent doctor would pay and to monitors the development of the aforementioned poor health condition of the aforementioned infant patient in order to take the necessary actions to treat his illness and prevent his health condition from worsening, however he failed to monitor the development of his health condition sick toddler, he did not sufficiently check the nosological condition of the infant patient who was continuously and rapidly deteriorating, nor did he evaluate according to the rules of medical science the clinical and laboratory findings, in order to apply, either by himself or in consultation with the on-call specialist pediatrician, appropriate treatment that would prevent the deterioration of the infant's health condition and his septicemic death, with the consequence that, due to the above omissions, the existing microbial infection and the pneumonia of the left lower lobe of the lung presented by the above infant were not diagnosed, which, as found at autopsy, showed thickening of the left lower lobe of the lung with alveoli filled with exudative elements, with fibrin and red blood cells and abscesses with abundant granules, not to proceed, either by himself or in consultation with the on-call qualified pediatrician, as medically indicated for this circumstance immediately the administration of intravenous antibiotic treatment that was required to treat the microbial infection, nor the administration of oxygen to the toddler who continued to have respiratory distress to prevent the development of septicemia, to incorrectly treat the toddler as suffering from a viral respiratory infection and to limit hospitalization from his admission in the morning hours of January 12, 2002 until the evening hours of the same day to the administration of the antipyretic and bronchodilator Aerolin and only late in the evening of the same day to administer the antibiotic amoxicillin (Amoxil 250mg), but not intravenously , as it was required to act immediately, but through the mouth, to develop in the sick toddler during the time he was hospitalized in the above Pediatric Clinic severe bacteremia characterized as septicemia, which in combination with lobar pneumonia lead to multiorgan failure - septic shock, resulting in cardiac ischemia of the infant patient, his irreparable cardiac failure and septicemia as the generative cause of his death which occurred in the midday hours of January 13, 2002. And yes, it turned out that the accused was a paediatric junior doctor, but he was also an on-call doctor and had been admitted to the Pediatric Clinic that looked after the sick toddler and had undertaken to monitor his state of health, in order to deal with his illness, either on his own, either in consultation with the specialist pediatrician on duty and had a special legal obligation (…)".

Based on these admissions, the aforementioned Court declared

the appellant guilty of involuntary manslaughter and imposed on him a prison sentence of twelve months, which was suspended for three years. With what was accepted by the Court of Appeal and sentenced the appellant (junior doctor) for involuntary manslaughter:

"(...) it included in its decision the (…) special and detailed reasoning (…). It is also mentioned that the appellant himself had the opportunity to carry out the medical examination of his patient (…) and it is irrelevant whether the above-mentioned qualified pediatrician P1 contributed to the infant's accidental death with convergent negligence on her part, regarding the initial diagnosis of the infant's illness".

AP 675/2014:

"In this case, as appears from its contested 314/2013 decision, the Three-member Court of Appeal of Thrace, which tried in second instance, declared the appellants guilty of the homicide of B. G. - L. for negligence (…). The Court of Appeals (…) uncontrollably accepted "(…) from the affidavits of all prosecution and defense witnesses, from all the documents that were lawfully read to the audience in conjunction with the defendants' apologies proved the following: On 5-14-2006, Sunday at around 4:10 p.m., B. G.-L. came to the Emergency Department of the General Hospital of Drama with severe pain in the right iliac fossa, a high fever of about 39 degrees C and tendencies to vomit. The minor was admitted to the Emergency Department and there she was immediately examined by the junior pathologist H.T., who diagnosed from her clinical picture alone that she was suffering from acute appendicitis, as was really the case. This particular junior doctor did not deal with the incident further, because his working hours at the Hospital were about to end. For this reason, he reported to his on-duty colleague, defendant, P.P. of H., resident (...), junior pathologist), that he examined the patient and that his assessment was that she was probably suffering from acute appendicitis. The P.P. of H. then transferred to his co-defendant, junior surgeon, A.T. of B., resident of (…) the opinion of their colleague who had left the Hospital in the meantime, that the patient had rather acute appendicitis and therefore had to be examined by a surgeon. The A.T. of B., in turn, examined the patient, she agreed in principle with H.T.'s diagnosis, but to confirm it, she also ordered hematological tests. These tests showed that the white blood cells and neutrophils in the patient's blood had increased significantly and specifically the white blood cells had risen to 19,600 with a normal value of up to 10,800 and the neutrophils to 90,800 with a normal value of up to 75,000. The

clinical picture of the patient combined with the results of the laboratory tests would objectively lead even the average junior doctor, pathologist or surgeon to a safe diagnosis that the patient was suffering from acute appendicitis. The testimony of the witnesses in this matter is clear. Nevertheless, as soon as A.T. received the information both from the minor herself and from her sister S. G. L. who was accompanying her that the patient was also having diarrheal stools, she naively changed her mind and canceled the order for admission of the minor to the surgical department of the Hospital and was convinced from the point of view of the junior pathologist P.P. of H. that it was a case of febrile gastroenteritis, which could be treated at home and even with very simple treatment (taking dry food and soft drink "coca-cola"). In fact, the specific junior doctor instructed the patient to leave for her home. However, the symptoms persisted and the minor continued to suffer mainly from unrelenting pains, in the lower right, in her abdomen. The patient came to the Hospital again on Thursday 18-5-2006 at around 09.30 with nausea, severe abdominal pain and now exhausted and dehydrated. The person on duty on that day and time, the junior doctor (...) defendant, A. T. of B., resident (...), simply received the patient, learned about her history from her medical file and was informed of the negative test results stool which had been ordered on 14-5-2006 by the defendant P.P. of H. The defendant did not take any further medical action, but sought out and fully informed about the incident a specialist pathologist at the Drama Hospital, whom she trusted completely, because she knew and worked well with her. This specialist doctor, in her only telephone conversation with the junior, assured her that the patient was suffering from febrile gastroenteritis on excursion. The A.T. of B. then gave the patient, as the specialist doctor had indicated, electrolyte solutions to treat her dehydration and also ordered microbiological tests. At the same time, she discharged the minor and recommended that she and her relatives receive medication for febrile gastroenteritis. The patient left the Drama Hospital for the second time, but was admitted the same day at approximately 20.30 in a pre-mortem condition. Despite the appropriate efforts of all the staff of the Hospital who were on duty and, although she was urgently transferred to the Intensive Care Unit of the Kavala Hospital, could not be revived and died shortly afterwards. Her death was caused by severe septic shock due to neglected peritonitis[27]. The cause of the minor's death was not disputed. The

27Peritonitis is an inflammation of both lobes of the peritoneum. The peritoneum covers the abdominal cavity and viscera. Peritonitis can occur in children and adults, as well as in both sexes. The causes of peritonitis can be perforation of the appendix (acute appendicitis that causes pain in the lower right part of the abdomen "breaks" and fills the viscera with poison), perforation of the stomach ulcer, necrosis and rupture of the intestine, rupture of the gallbladder, pancreatitis, etc. Symptoms can be as follows: Continuous pain throughout the abdomen, bilious vomiting (yellow-green color), fever up to 38.7°C, palpitations, tachypnea, etc. The diagnosis of the disease mainly requires microbiological tests (increase of white blood cells above 15,000-

death of the patient is due to non-conscious negligence (and) of the defendants A.T. of B. and P.P. of H., because the patient's clinical picture on 5-14-2006 and the results of the laboratory tests carried out on the same day they had to lead them with certainty to the only possible diagnosis that the minor was suffering from acute appendicitis. In fact, the defendants had received sufficient university education and had already acquired practical experience in a public nursing center with a large traffic of patients, with the result that they were able to easily understand the medical problem of the patient, whom they undertook to treat. However, the defendants did not deal with the attention they deserved and were able to handle the incident in front of them, as a result of which they were led to a wrong diagnosis, administered inappropriate medication to the minor and even decided that she should return to her home to recover. In fact, these two junior doctors did not inform the specialist on-call doctors about the incident at all, who thus did not examine the patient. However, if these two defendants had either a) demonstrated the diligence of the average junior doctor, or b) had notified, as they should have and could have, the specialist doctors on duty at the Drama Hospital on 5-14-2006, the diagnosis would ultimately be correct, the patient's medical problem would have been treated by admitting her to the Hospital's surgical unit and with immediate routine surgery and her death would have been avoided. The defendants could even have foreseen that their omissions were capable of fatal consequences for the patient, because, even in the common experience of the average person, the neglect of appendicitis usually leads to peritonitis, which in turn often leads to death. The junior surgeon A.T. of B. had initially suspected that it was appendicitis, but casually did not insist on discussing her opinion with the defendant P.P. of H. It is also proved that the death of the minor was due to the unconscious negligence of both the accused, junior doctors of the Hospital Drama. In particular, the specialist pathologist H.S. of L., resident (...), was on duty on 5-14-2006, but was unexcusedly absent from the Drama Hospital. It is characteristic that on that day he examined only one patient at 22.00. The specialist surgeon, defendant A.S. of G., resident (...), was also unjustifiably absent from the Emergency Department of the Hospital, although at that time he was not providing medical service in another part of the Hospital. In fact, this doctor examined only 3 cases that day. In fact, these two specialist doctors did not take care at all to be informed about the movement of patients in the Emergency Department during their absence from it. On the contrary, they unjustifiably allowed the operation of the Emergency Department to junior doctors (...)". With what it accepted, the Court of the substance made in its challenged decision the specific and detailed reasoning required by the

20,000), while X-rays, CT and MRI help in the final diagnosis of the disease. The surgical opening of the peritoneal cavity for drainage and cleaning is the most basic therapeutic action.

above provisions of the Constitution and the Code of Criminal Procedure (...)".

Addendum: AP 1057/2016, AP 1419/2016, (obligation to monitor the patient's postoperative course)

In the AP 1057/2016, the following were accepted among others:

"This particular legal obligation of the doctor to prevent the criminal outcome of the patient's death derives from the law (art. 24 of the Compulsory Law 1565/1939 "On the code of practice of the medical profession"), of the code of medical ethics (Royal Decree 156/6.7.1955 and already n. 3418/2005 "On the regulation of medical ethics") and from its guarantor position towards the safety of life or of the patient's health created during the execution of the medical procedure. This is how the accused doctor is checked for any action or omission in his above capacity in terms of monitoring the patient's progress, i.e. if he carried out the following medical treatment and the required tests or and other invasive medical operations to deal with the side effect or complication that would risk harming the patient's health (...) (AP 182/2015, AP 971/2013). (…) Finally, when the crime of negligence is the result of the contributory negligence of several persons, each of them is judged and liable independently and separately of the others according to the reason for the negligence shown by him and if, however, the final result is in a causal link to her. The act or omission of the perpetrator is in a causal link with the result that occurred when it, according to common understanding, is the one that directly caused the result and is therefore in direct causality to it. It is sufficient, in order to establish liability, that the act or omission was one of the productive conditions of the result, without which it would not have occurred, regardless of whether other conditions contributed, directly or indirectly. This is because the view held in criminal law follows the findings of the theory of the equivalent of the terms, under the variation of the active cause, as opposed to the theory of opportune causation, which prevails with regard to civil liability (AP 230/2015)"[28]. "(...)

28However, as already pointed out above, according to the theory of the objective attribution of the result to the perpetrator, only the causal connection between behavior and result is not sufficient for establishing criminal liability according to the theory of the equivalent of conditions (conditio sine qua non) held in science and jurisprudence but in addition an internal and not superficial link between the conduct of the perpetrator and the result is required. This internal (objective) link exists, when the behavior of the perpetrator (action or omission) caused an illegal (unacceptable and not permitted by the legal order) risk to the material object of the act (the specific legal good) and this risk was realized to the specific future harmful effect. This risk did not materialize, in which case the objective attribution of the result to the

In this case, with the challenged (...) decision, the Three-member Court of Appeal of Patras, which tried in the second instance, declared the appellants guilty of negligent homicide and sentenced them to two years imprisonment each, which was suspended for three years. In the rationale of the contested decision, the Court of Appeal (…) accepted without review, according to a faithful translation, the following: "B.K., aged 47, who suffered from menstrual bleeding due to uterine fibroids, in the month of May 2007 was visited, accompanied by her sister and civil plaintiff E.P., the first defendant P.M., medical surgeon, Director of the Obstetrics and Gynecology Clinic of the General Hospital of Patras "SAINT ANDREAS", in order for the latter's upper health problem to be treated with surgery of the type of abdominal hysterectomy due to a fibroid uterus. (…). So on 21-6-2007 (…) the above B.K. was admitted to the Gynecology Clinic of the above hospital, where she underwent a pre-operative check-up, during which it was established that her state of health was normal in all respects (pathological and cardiological) and therefore it was judged by the medical staff that there was no obstacle, suspension of the agreed surgery. So the next day, i.e. in the morning hours of 22-6-2007 (…) the first defendant, assisted by the assistants of D.T. and K.K., junior doctors, performed the aforementioned surgery, in the presence of the anesthesiologist O.P., while nurses K.T. and K.M. took part from the nursing staff. Specifically, under general anesthesia, an abdominal hysterectomy was performed...During the operation, the patient was given two units of blood due to the induced bleeding in the operated area. After her resuscitation, the patient was transferred to the hospital ward hemodynamically stable and with good diuresis. At noon of the same day at around -2:30 p.m., she was visited by the first defendant who practiced the surgery (…). The later informed her relatives (husband and sister) about the successful outcome of the surgery. In fact, he showed the sister of the operated E.P. a photographic representation of the latter's uterus and reassured her about her sister's good post-operative progress, and advised her to help her get up at night. Indeed, in the evening hours of the same day, the patient's sister tried to lift her sister B.K. out of bed, but she noticed that the latter was unable to do so and, in addition, showed a tendency to faint. This fact, although it worried the patient's sister, she tried to justify it to herself as an incident of the patient's post-operative condition. However, in addition to the above observed weakness of the patient, the latter as early as 3 p.m. of that day presented a febrile movement, which rose to a temperature of 37.5 degrees Celsius around 6:00 p.m., at which time she was administered by the on-call junior doctor K.X., and in charge of the third defendant A.P., medical surgeon, deputy director of the Clinic, and on-call of the patient care

perpetrator is excluded, among other cases and when the historical event is now subject to a foreign area of responsibility, unless there is a case of permitted retrospective exception to the negligence of the original perpetrator.

department, Zinacef antibiotic treatment, as a result of which the fever dropped to normal temperature levels (36,8) at around 3 o'clock in the morning of 6-23-2007. On this first post-operative day, G.N., on-call junior doctor, took blood from the patient for the post-operative control of her state of health. From the blood tests that followed, it was found that the hematocrit had dropped to 26.1, while during the blood test, when she entered the hospital, the hematocrit index reached 36 and it remained there when she left the surgery, where, as mentioned above, was transfused with two units of blood to replace what was lost. The two junior doctors G.N. and K.K. informed the on-call second defendant E.S., an obstetrician-gynecologist surgeon and deputy director of the above Clinic, about this fact of the drop in hematocrit, who gave an order for a repeat of blood tests the next day in the morning. At the same time, the patient's clinical picture was similar to that of the previous day after she was transferred from the operating room to the hospital ward with the main characteristics being exhaustion, the inability to stand up and stabilize in any position (standing or sitting), the inability to move, the abdominal pain, malaise, anorexia and facial pallor, while the fever continued to fluctuate from 36.4 to 37.9. The next day on 24-6-2007, a Sunday, the junior doctor G.N. carried out the planned new blood test, according to the result of which, which was taken in the afternoon, the value of the hematocrit was particularly low, since he had down to 22.2. At the same time, the aforementioned symptoms of the patient's clinical picture were getting worse, according to the testimony of the patient's husband and sister, who no longer hid their concern and fear for the outcome of the patient's health, which forced this sister and civil plaintiff E.P. to attempt to contact the first defendant, who had performed the surgery, by telephone on Monday 6-25-2007, but this was not possible, since she was informed from his home that he was absent at abroad and it was impossible to contact him. Due to the significant drop in the hematocrit, the second defendant E.S. was informed again by the junior doctors G.N. and K.X., through whom, the recommendation of the above defendant was conveyed to the patient's relatives not to worry, because the drop in hematocrit is due to postoperative anemia. The same specialist doctor gave instructions for the patient to be transfused with two units of blood, which took place around 10:00 p.m., to empty the bowels by prostrating, to give her fluids (soup) by mouth and change the antibiotic to oral Zinadol. At the same time, the patient's fever rose to 38.2, accompanied by chills, resistant to antipyretics. On 25-6-2007, Monday, the third defendant A.P. took charge of the clinic's patient care department. The junior doctors P.K. and B.P. took the patient's morning blood tests in the afternoon of the same day and it was found that the general blood sample was a clot (a coagulated mass, as of blood), i.e. an unsuitable sample, a fact about which the second defendant E.S. was informed, who gave an order to repeat the blood test the next day in the morning, as well as

to change the antibiotic treatment from Zinadol in Berserk i.e. intravenously. The patient's health condition remained unchanged, with episodes of chills due to a rise in fever to 38 degrees around 24:00, while the aforementioned symptoms of abdominal pain, extreme weakness of movement, facial pallor, etc. remained, and at the same time ecchymoses appeared in the abdomen. This fact further intensified the concern of the patient's relatives and especially her sister E.P., who on the same day (6-25-2007) called the medical microbiologist S.D. in order to visit her sick sister in the hospital and take a blood sample for a laboratory test, but the latter refused for ethical reasons. In addition, the patient's sister called her acquaintance doctor A.G., who was deputy commander at the above hospital, to intercede with the second defendant E.S. in order for him to examine her and carry out an abdominal ultrasound or any other examination necessary to ascertain her state of health, since he was afraid of internal bleeding. In fact, the next day on 26-6-2007, Tuesday, a telephone conversation took place between A.G. and E.S., during which the former asked the latter to perform an abdominal ultrasound. However, such a medical procedure did not take place by the second accused, who simply limited himself to visiting the patient, reassuring her relatives that "everything would be fine", and that the patient would be discharged after two days. On the same day, the hematocrit value reached 29.2, without however positively affecting the overall clinical picture of the patient, who presented the same symptoms as the previous days, and the problem was effectively treated with any of the medical procedures applied until then by the on-call specialist doctors E.S. and A.P. (second and third defendants), while the fever rose to 38.7, which was even specifically marked on the patient's chart with the note "beware of temperature". On the evening of June 26, 2007 at around 12:00 p.m., M.K. assumed the duties of the patient's exclusive nurse, according to whose statements the patient B.K. was pale, complained of shortness of breath, felt weight and pressure in the abdomen, she constantly complained of a feeling of weight in her stomach, which prevented her from sleeping (…). In addition, the patient was unable to go to the toilet and, while the above dedicated nurse was giving her the night pot, she was unable to urinate. It should be noted that the patient had the above symptoms before, according to the testimony of M.K., who informed the nurses about the poor state of the patient's health. At 03.00 and 06.00 hours in the morning the thermometer showed 36.3 and 36.2 degrees, respectively. The on-call doctor on 26-6-2007 K.X. visited the patient's ward at midnight, and according to him, her state of health was good. Around 7:35 on 27-6-2007 the patient suffered a cardiorespiratory arrest and an unsuccessful attempt at cardiorespiratory resuscitation was made by the on-call junior doctor K.X., together with the anesthesiologists E.P. and M. P., and finally her death occurred. The B.K.'s death was a result of intra-abdominal bleeding after abdominal hysterectomy surgery, according to the

(...) 28-9-2007 forensic report of A.T., Medical Examiner, Head of the Forensic Service of Patras, which (intra-abdominal bleeding) came, in her estimation, from the relaxation of the ligations of the arterial or venous vessels, which is considered to be the most common cause of postoperative bleeding, without however specifying what caused this postoperatively relaxation. The said forensic report, regarding the autopsy- necropsy she performed by A.T. on 28-6-2007 in order to give an opinion on the cause of death of B.K., mentions (…) in particular as treating doctors, who took charge of B.K.'s hospitalization and were on-call, E.S. on 23, 24, 25, 26 and 27/6/2007, who in addition as deputy Director of the Obstetrics and Gynecology Clinic of the General Hospital of Patras "SAINT ANDREAS" replaced the absent Director P.M., and A.P., as Deputy Director of the above Clinic and in charge of the Patient Nursing Department, who was on-call on 6-22-2007, 6-25-2007, 6-26-2007 and 6-27-2007, although they were obliged as a consequence of their profession to exercise particular care and attention (…) from their legal position as hospital doctors in a state hospital, as well as from their guarantor position towards the safety of the above patient's life (…) from their negligence, i.e. lack of the attention they deserved from the circumstances and could pay, as average prudent doctors, each with the specialty of obstetrician-gynecologist surgeon, while they knew from the medical file, the visits and the examination of the patient the real facts about the surgical intervention basis and the post-operative progress of the patient's hospitalization and in particular the following: (…) Despite the above data, which were clear evidence of a rapid negative evolution of the patient's health condition and which posed a risk to her life, which was also confirmed by her subsequent death, the defendants, in violation of the objectively imposed duty of care but also the rules of medical science, art and experience, they omitted: 1). To evaluate the aforementioned clinical picture of the patient throughout her hospitalization in combination with the hematological findings of her examinations and in particular the vertical, well below the minimum normal values, drop in the hematocrit value (...) which were clear signs and symptoms of ongoing blood loss (…). 2). To immediately submit the patient to an imaging test (x-ray, ultrasound, axial and magnetic, scintigraphy, etc.) or to any other diagnostic method, suitable for diagnosing the negative progression of her hospitalization and above all the bleeding and any focus of infection. These imaging controls were required to be daily and repeated, every three hours throughout her hospitalization and especially from the day after the operation, when the large drop in hematocrit was first detected, so the defendants, evaluating the clinical data and laboratory findings should definitively establish the presence of internal bleeding. If an imaging test had been carried out even on 26/06/2007, B. K. would have been saved, since, as it appears from the Forensic Report, during the autopsy, hemorrhagic perfusion of all anatomical structures in the area of the intervention was

found (hysterectomy with preservation of the appendages) and within the peritoneal cavity a quantity of free blood is observed, equal to 1,600 cm^3, approximately. The existence of this large quantity of free and recent blood, proves that on this day, the last of the patient's life, there was a great bleeding, which the defendants did not investigate at all. 3). To carry out daily and repeated, every three hours, hematological checks of the patient's hematocrit throughout her hospitalization, especially after the transfusion of two bottles of blood which took place on 06/23/2007, after the vertical drop was established of hematocrit and 4). To proceed with the treatment of the bleeding in the medically indicated manner, in particular by reintervention and ligation of the bleeding venous or arterial vessels and active blood transfusion to the patient with which, with certainty, even in the last days of her hospitalization, 06/26/2007 and 27//06/2007, her death would have been avoided. As a result of the connected omissions of the above defendants, the patient's intra-abdominal bleeding continued, which had started immediately after the surgery, throughout her hospitalization and until her death, on 27-6-2007, and she was (bleeding) the only active cause of her death". With what it accepted, the Court of the substance decided in its contested decision, with regard to the above appellants, the specific and detailed reasoning required by the above provisions of the Constitution and of Greek Code of Criminal Procedure, since it sets out clearly, fully and without contradictions or logical gaps in the facts, which were proven by the hearing process, the objective and subjective nature of the above crime of negligent homicide, for which the above appellants were convicted (…) B) Appellants: P.M. by (...) 208/2015 decision of the Three-member Court of Appeal of Patras, the appellant P. M. was declared guilty of negligent homicide with the mitigating factor of prior honest life and was sentenced to a two-year prison sentence which was suspended for three years (…). On 23-6-2007, Saturday, one day after the surgery, the defendant left Patras for an educational trip to London in order to participate in a ROYAL COLLEGE scientific conference on “Surgical reconstruction of the pelvic floor” which was conducted from 6-25-2007 to 6-28-2007. She did not inform the patient and her relatives about his absence, as her husband and civil plaintiff G.A. and her sister testified and civil plaintiff E.P., if the defendant had informed them that he was going to leave abroad immediately after the surgery, neither they nor the patient would have consented to the surgery. Therefore, the above defendant, since he assumed the responsibility of monitoring the patient's progress during the post-operative stage, without even informing the patient of his intention to be absent abroad, should have remained in his position and monitored the post-operative progress of his patient, because he was also her attending doctor, necessarily also for the post-operative stage, a status, which is not negated by the fact that based on the on-call schedule of the above Clinic, the other co-defendant had to monitor the course of the patient, who operated on him. The

status of the attending doctor did not become inactive for the aforementioned doctor, because the object of the surgeon's responsibility, and in this case the first defendant's, is the good outcome of the surgical intervention, which includes, in addition to the pre-operative control, the stage of the surgical intervention and the postoperative stage, which are a whole that is organized and directed by the surgeon. Therefore, the above defendant, as the surgeon who performed the operation, was the attending doctor of the above patient B. K., who operated on 6-22-2007, necessarily also for the post-operative stage. More specifically as a medical surgeon, Director of the Obstetrics and Gynecology Clinic of the General Hospital of Paros "AGIOS ANDREAS", and attending doctor of the above patient B.K., whom she operated on 22-6-2007 for removal of the uterus (abdominal hysterectomy), necessarily and for the post-operative stage, although he was obliged as a consequence of his profession to exercise special care and attention, having, both from the written provisions on medical ethics (L. 3418/2005) and articles 13 and 24 of Compulsory Law 1565/1939 "Code of Practice of the medical profession", in terms of his legal position as a hospital doctor in a state hospital, as well as his guarantor position towards the safety of the above patient's life, a special legal obligation to prevent the criminal outcome of the homicide of the hospital's patients, due to a lack of of the care which was due to the circumstances and which he could pay, as an average prudent doctor with the specialty of surgeon, obstetrician gynaecologist, being aware of the history of the above patient as well as the fact of the blood loss in the surgery and the index of her hematocrit after replenishment by transfusion of the lost amount of blood, and having the ability and experience to predict, due to his scientific competence and of his knowledge, the possibility of causing postoperative bleeding, which patients present as a possible complication in this type of surgery, although he, immediately after the surgery, did not at all deal with the entire postoperative course of the above patient, as he should have, and without informing herself and her relatives, she did not appear at the Clinic at all during her hospitalization, being irregularly absent at a medical conference abroad (from 6-25-2007 to 6-28-2007). This had the consequence of the non-fulfillment of the above obligation towards the patient to monitor her progress during the post-operative stage and his immediate intervention to implement the appropriate medical treatment, assessing the patient's clinical picture, the symptoms she was exhibiting (inability to move, standing or sitting position, strong desire to lie down, and feeling sleepy, pain in the area of the operation, paleness of the face, discomfort, shortness of breath and ecchymosis in the abdomen) and the great drop in the value of the hematocrit in the next two days after the operation (23-6 -2007 value 26.1 and 24-6-2007 value 22.2) and in addition the imposed tests on the basis of which he would arrive at the correct diagnosis of the existence of intra-abdominal bleeding and from there he would

proceed to treat it in the medically appropriate manner, such as by re-intervention and ligation of the bleeding venous or arterial vessels and active transfusion of blood to the patient, by which with certainty a her death would have been avoided. As a result of the above defendant's omission, the patient's intra-abdominal bleeding, which had started after the surgery, continued throughout her hospitalization and until her death on 6-27-2007, and it was this (bleeding) that the only active cause of her death. With what it accepted, the Court of the substance decided in its contested decision the specific and detailed reasoning required by the above provisions of the Constitution and the Code of Criminal Procedure (...)".

It should be pointed out that the defendant who performed the surgery, P.M. had been acquitted in the court of first instance and the misdemeanor prosecutor appealed against the acquittal decision[29].

So a question arises: Was he really P.M. innocent; Do we have here a case of subscribing the historical event to a foreign area of responsibility? In other words, did the historic event now fall under the responsibility of the other two defendants, who as on-call doctors, supervised the patient's post-operative course and failed to take certain actions, which would have prevented the fatal outcome, so objective attribution is excluded of the result of the death in P.M.; In my opinion, the Three-member Court of

29In this case, as can be seen from the challenged decision and the minutes incorporated therein, the Three-member Court of Appeal of Patras, with its interim decision n.. 1391 a/1014, rejected the claim put forward in writing, and developed orally, by the attorney of the appellant P.M. regarding the inadmissibility of the appeal of the Misdemeanor Prosecutor of Patras against the acquittal decision n. 1880/12-9-2013 of the Three-Member Misdemeanor Court of Patras and formally accepted his appeal, then, after examining the merits of the case, declared the appellant B.K. guilty of negligent homicide, with the mitigating factor of prior honest life, and sentenced her to a prison sentence of two (2) years, suspended for three years. This appeal, as established, contains the required for its admissibility, according to the aforementioned provision of art. 486 par. 3 of Greek Code of Criminal Procedure, special and detailed reasoning.

Appeal of Patras, although, did not use the theory of the objective attribution of the result to the perpetrator, correctly handled the question of P.M.'s responsibility and rightly found him guilty, and was upheld by the Supreme Court.

In no case could P.M. to lay the blame solely on the two other doctors. The historical event continued to be part of his own area of responsibility even after the end of the surgery. In this regard, the rationale used is disarming:

"The above defendant, since he assumed the responsibility of monitoring the patient's progress during the post-operative stage, without even informing the patient of his intention to be absent abroad, should have remained in the position and to monitor the post-operative course of his patient, because he was also her attending doctor, necessarily also for the post-operative stage. The responsibility of the attending doctor did not become inactive, because the intervention includes, in addition to the pre-operative control, the stage of the surgical intervention and the postoperative stage, which are a whole that is organized and directed by the surgeon. And if one were to accept with lenience the historical event's subordination to a foreign area of responsibility, to the area of responsibility of the two other doctors, who by virtue of their duty supervised the post-operative course of the patient and then deceased, in which case the retrospection of P.M.'s responsibility is basically excluded (*Regressverbot*), again as an exception, this recourse to the responsibility of P.M. would be allowed. As already mentioned above, in order to establish the punishment, it is exceptionally permitted to look back at the behavior of the original perpetrator (in his external negligence), whether the subsequent act of another is done with intent or negligence, since the initial negligence was also accompanied by internal negligence, that is, it was possible to diagnose and predict the future outcome. The external negligence of P.M. consists in the fact that almost immediately after the operation he left for London and failed to personally and closely monitor the patient's post-operative progress. His internal negligence consists in the fact that he could, under the specific circumstances, as accepted by the Court of Appeal, foresee as a possibility the result of the patient's death as a result of an intra-abdominal hemorrhage. The above decision includes the following: "with the specialty of a surgeon, obstetrician-gynecologist, being aware of the history of the above patient as well as the fact of blood loss in the operating room and her hematocrit index after replenishment by transfusion of the lost blood

amount of blood, and having the ability and experience to predict, due to his scientific competence and knowledge, the possibility of causing post-operative bleeding, which patients present as a possible complication in this type of surgery, although he, immediately after the surgery, did not deal at all with the entire post-operative course of the above patient, as he should have, and without informing her and her relatives, he did not appear at the Clinic at all during her hospitalization, being irregularly absent at a medical conference abroad (...)""[30].

Besides, in AP 1419/2016, among others, the following were accepted:

"Subsequently, the Three-member Court of Appeal of Patras declared the accused-appellants guilty (the second of them by majority), with the mitigating factor of art. 84 par. 2a PC, homicide by convergent negligence, consisting in that: "In Patras on 24-11-2008 due to their negligence, i.e. lack of attention, which they owed under the circumstances and could have paid, they did not foresee the punishable result of the acts and of their omissions and caused the death of D. M., although they had a special legal obligation to prevent this result from occurring and despite the fact that as a result of their profession they were obliged to exercise special care and attention (…)".

Specifically, although the defendants had, due to their status as doctors and as employees of a public hospital, the special legal obligation, based on the provisions of Compulsory Law 1565/1939 "Medical Practice Code" (articles 13 and 24), of Law 3418/2005 "Medical Code of Ethics" (articles 2 and 8) and Law 3528/2007 "Civil Servant Code" (articles 24 and 25), i.e. based on express provisions of the law and complex of legal duties linked to their legal position as employees in a hospital, they did not take the actions objectively imposed by their attributes, namely: A) The first defendant, M.P., as Director of the Obstetrics-Gynecology Clinic of the General Hospital of Patras

30AP 1114/2016 also emphasized the obligation of the attending doctor to personally monitor the patient's postoperative course.

"Agios Andreas" and an obstetrician-gynecologist, in his above capacity both as the surgeon responsible for the operation to which the patient underwent and of the Director of the Obstetrics-Gynecology Clinic and therefore competent and responsible for the orderly operation of the clinic, in view of the fact of the complication that occurred during the operation, did not take care of the diligent and continuous monitoring of the patient from the point of her completion of the operation until the installation of the patient in the clinic ward, neither for her proper transfer to the clinic nor for the monitoring of her health condition after her transfer to the clinic and did not draw attention to his fellow doctors for continuous and increased monitoring of the patient, since, i) He did not inform the doctors of the clinic at who was the Director that the above patient was going to be transferred, who had actually presented a complication in the operating room, so that they would be knowledgeable and prepared to receive her and monitor her post-operative condition within the clinic ward, ii) Despite the fact that the specialist medical supervisor A.A.O. was in charge of being in the Obstetrics-Gynecology clinic, she instructed her to be outside of it and specifically in a planned surgery, i.e. she assigned parallel duties to the above doctor, with the result that she was absent from the clinic at the time of collection of the patient.

B) The accused D.C., as a qualified obstetrician-gynecologist and responsible doctor of the clinic on the specific date, was unjustifiably absent from the clinic premises, being at the critical time of the patient's admission to the clinic's ward in the regular outpatient clinics, nor did she take care to be informed about the possible transfer and admission of a patient to the clinic, although she knew that on that particular day scheduled surgeries were taking place from the morning, and the result of her absence was that the patient was deprived of the appropriate follow-up of her post-operative course by a qualified doctor. As a result of all the above actions and omissions of the first and second defendants, she received incomplete and inappropriate medical care and within a period of approximately six (6) hours from being admitted to the operating room she ended up, due to intra-abdominal bleeding, which as the only active cause, led to her death.

Following these: A) Regarding the appeal of the P.M. and its additional reasons: With what it accepted, the Court of substance, according to the combination of reasoning and dispositive, made in its contested decision the required by the above provisions of the Constitution and of the Code of Criminal Procedure special and detailed reasoning, since it sets forth, clearly, completely and without contradictions or logical gaps, the facts, which were proven by the hearing process and

constitute the objective and subjective nature of the criminal act of negligent homicide, for which the appellant was convicted, under the substantive criminal provisions of articles 15, 26 par. 1, 28, and 302 par. 1 of the Penal Code in combination with articles 13 and 14 Compulsory Law 1565/1939 (Medical Practice Code), 24 and 25 Law 3528/07 (Code of Public Administration Employees and Civil Servants) and 2 and 8 Law 3418/2005 (Medical Code of Ethics), which he correctly interpreted and applied and did not violate directly or indirectly.
In particular, despite the appellant's objections to the contrary: A) In the reasoning of the offended party, the following are set out clearly and fully: a) the facts constituting the negligent behavior of the appellant, which constitute a violation of the rules of medical science and the complex of legal duties, which are related to the legal position of the appellant as an employee in a hospital, identified in that he 1) as the surgeon in charge of the operation to which the patient D. M. underwent on 24-10-2008, during which a successful treatment by him took place surgical event (injury of the right internal iliac vein) resulting in significant and sudden bleeding, during the post-operative stage, i.e. from the time of completion of the surgery until the patient's installation in the clinic ward, did not take care (omit) to locate and inform (indeed verbally) the doctors of the clinic that he would be transferred the above patient as well as for the risk she

ran from the bleeding that occurred in the operating room, while providing instructions for her follow-up, as the average prudent surgeon would do, so that the latter (clinic doctors) are aware of her condition and prepared to receive her and monitor her postoperative condition within the clinic ward and 2) as Director of the Obstetrics-Gynecology Clinic of the General Hospital of Patras "Agios Andreas" and therefore competent and responsible for its proper operation, despite the fact that the qualified physician, supervisor A.O.A., was assigned to be in the Obstetrics and Gynecology clinic, instructed her to be outside of it (thus increasing the chances of the two remaining doctors being employed by examining other patients in the wards) and specifically in a scheduled surgery, i.e. assigned her parallel duties, as a result of which she was absent from the clinic at the time of receiving the patient D. M., who during her stay in the ward of the clinic suffered an intra-abdominal hemorrhage, as a result of which her death occurred around 2:00 p.m. of the same day (24-10-2008) (…). B) With regard to the appeal of the G.D.: With what it accepted, the Court of the substance, in its contested decision, did not provide the specific and detailed reasoning required by the above provisions of the Constitution and of the Greek Code of Criminal Procedure, since it did not sets out in it clearly, completely and without contradictions or logical gaps, the facts, which were proven by the hearing

process and constitute the objective and subjective nature of the criminal act of negligent homicide, for which the appellant was convicted, the evidence from which he deduced these incidents and the reasoning based on which he classified them in the substantive criminal provisions of articles 15, 26 par. 1, 28, and 302 par. 1 of the Greek Penal Code in combination with articles 13 and 14 Compulsory Law 1565/1939 (Medical Practice Code), 24 and 25 Law 3528/07 (Code of Public Administration Employees and Civil Servants) and 2 and 8 Law 3418/2005 (Medical Code Ethics). In particular, although the injured party admits that the doctors of the Obstetrics-Gynecology Clinic of the General Hospital of Patras, including the appellant here, had not been informed by the surgeon P.M. about the condition of the patient who was operated on by the last patient D. M. and the complication she presented in the surgery on the morning of 10-24-2008 as well as that the relevant medical file of the patient in question with the surgery record was completed the next day (10-29-2008), then contradictorily bases the above-mentioned appellant's negligence regarding the patient's death from intra-abdominal bleeding, which occurred in the clinic's ward, on the fact that she (the appellant), although as a qualified doctor and in charge of the clinic, should have been there and received patient D.M., however, was unexcusedly absent from the outpatient clinics at her choice, as a result of which she did

not receive and examine the above operated patient and not to be informed from her file about her state of health and her history, but without justifying from whom else (apart from the surgeon P.M.) she could receive or received the relevant information regarding the condition of the above patient as well as how it was possible for her to gain knowledge of the operating room's record, which had not been completed, so that there could be talk of her unjustified absence in the outpatient clinics (that is, in an area located within the Hospital) "at her choice", an admission which presupposes on its part, weighing between several obligations, however known to it.

Thus, the possibility of her predicting the future criminal outcome is not justified at all since, according to the victim's admissions, she had no information regarding the state of the deceased's health and the complication that her health presented in the surgery. Therefore, the relevant from article 510 par. 1 lett. D and E Code of Criminal Procedure, considered *ex officio*, reason of the adjudged appeal, by which the contested decision is affected for lack of specific and detailed reasoning but also for lack of legal basis, is valid and must be accepted. Pursuant to the above and in addition to the investigation of the other grounds of appeal, the contested decision regarding the appellant defendant G.D. of G. must be annulled and subsequently the case regarding her must be referred for a new discussion to the same

Court, constituted by other judges, except those who tried before. For these reasons annuls the decision n. 1214/2015, 247 and 294/2016 of the Three-Member Court of Appeal of Patras regarding the accused-appellant G.D. of G. refers this case for new discussion in the same Court, to be composed of judges other than those who tried before. Rejects the application dated 23-5-2016 (with no. 13/2016) of P. M., resident of (…) for the annulment of the decision n. 1214/2015, 247 and 294/2016 of the Three-member Court of Appeal (Misdemeanors) of Patras as well as the additional reasons from 7-18-2016 which were filed with a separate document on 7-19-2016.

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